SUPREME COURT OF THE UNITED STATES.

No. 576.

THE BATESVILLE INSTITUTE AND WILLIAM J. ERWIN, ADMINISTRATOR OF THOMAS COX, DECEASED, APPELLANTS,

vs.

MAX. KAUFMAN, L. KAUFMAN, AND C. HIRSCH, AS MAX. KAUFMAN & COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 Be it remembered that on the 5th day of March, A. D. 1868, came into the clerk's office of the circuit court of the U. S. for the eastern district of Arkansas, M. Kaufman & Co., by Watkins and Rose, their solicitors, and filed this bill of complaint and exhibits thereto, against the Batesville Institute and others, which bill of complaint is in the words & figures following, to wit:

In the circuit court of the United States for the eastern district of Arkansas, in chancery.

M. KAUFMAN & CO., PLAINTIFF', }
vs.
THO'S COX ET AL., DEFENDANT'. }

To the Honorable H. C. Caldwell, judge of the said court in chancery sitting:

Humbly complaining, would show unto your honor your orators, Max. Kaufman, Lewis Kaufman, and Calaman Husch, partners doing business under the firm-name of M. Kaufman & Co., who are citizens of the State of Louisiana; that at the March term of the circuit
2 court of Indep'ance County, in the State of Arkansas, John E. Wamack, & Tho's Welch, by the judgement and consideration of said court obtained a judgement against a certain corporation called the Batesville Institute, whose domicile is in said county, wherein the said circuit court found that on the 15th day of January, 1861, the said Wamack & Welch filed in the office of the clerk of said court their account for work and labor, &c., done on the building of the defendant therein, known as the Batesville Institute, situated on lot numbered eight of block numbered thirteen in the town of Batesville, in said county, which said account was verified by affidavit, as the law requires, and that the work was done under a written contract with the defendant in *in* said judgement, the corporation aforesaid, by the plaintiff in said judgement, and that an abstract thereof was, by the clerk of said court, on the day and year af*for*'said, entered on his judgement-docket as the law required, whereby the plaintiff in said judgment fixed on said house and lot of the said defendant their *lein* for whatever sum might be due them, &c., for work, &c., done on same, and that the said *lein*
3 was fixed within the time which the law requires, and that the said defendant was justly indebted to the said plaintiff in the sum of twelve thousand four hundred and ninety-one dollars and sixty-seven cents, which was, under the law in such case mad' and provided, a *lein* on the said building and the lots on the day of the filing, and the interest, at six per cent. per annum, one hundred and twenty-four dollars and ninety cents, whereby it was by said court considered that the said plaintiffs, John E. Wamack & Thomas Welch, should have and recover of and from the said defendant, the Batesville Institute, the said sum of twelve thousand four hundred and ninety-one dollars and sixty-seven cents for their debt, and the further sum of one hundred and twenty-four dollars and ninety cents, being six per cent. interest on said debt, from the filing of said lien to the date of said judgement; and it was further considered that said debt be a *lein* on the said building
4 known as the Batesville Institute aforesaid, and that the said building and lot be subject to sale for the debt and damages aforesaid; and the clerk of said court was ordered thereby to incorporate the description of the house and lot therein mentioned in the execution to be issued on said judgement, and therein to command the sheriff or other

to cause to be made the said debt, damages, and costs of said suit, out of said property; and it was further considered that the said plaintiffs therein should have and recover of*f* and from the said defendant therein all their costs in and about said suit sustained; and that whereas the sum of two thousand dollars above the sum therein adjudged, *was* claimed by the said plaintiffs therein, was shown not then to be due, on account of the unfinished state of the building, it was by consent expressly entered there that the said judgement was no waiver of
5 the rights of any of the parties thereto in relation to said two thousand dollars, but that the same remain without prejudice, &c.; all of which will be more apparent unto your honor by reference to a copy of said judgment hereto attached, marked Exhibit A, and made part hereof.

A. Judgment of Warwick & Welch v. Batesville Institute.

Your orator would further show unto your honor that on the 15th day of January, 1861, the said Warmack & Welch made their certain conveyance of that date under their hands and seals, which recited that in consideration of one dollar and the premises thereinafter mentioned they did sell and convey unto William E. Gibbs, who has since departed this life, their interest in and to a mechanic's l*ei*n on the brick building known as the Batesville Institute, in the town of Batesville, Ark., and situated on lot number eight of block number thirteen of said town, which l*ei*n was that day filed in the office of the clerk of the county of Independ*a*nce, meaning the l*ei*n in said judgment
6 mentioned, and entered on judgment-docket according to law. And they did thereby authorize said Gibbs to use their names in enforcing said l*ei*n and in *and in* making it effectual in any and all ways, legal and equitable, that might be necessary, but that it was expressly understood that the said sale and assignment were made to said Gibbs as trustee merely, and that when he should have enforced said l*ei*n by sale or otherwise, he should hold the proceeds thereof to be and perform the following trusts, that is to say, that whereas the said Wamack & Welch were indebted to Aaron Hirsch and Israel H. Adler, who were then merchants and partners doing business under the firm-name of Hirch & Adlen, in the sum of about eleven thousand dollars, due by note and account for money lent and materials furnished to complete said building; and that when a sale should be affected the said Gibbs should receive the proceeds and pay the expenses of the necessary proceedings out of them first, and should then pay the debt due to
7 the said Hirsch & Adlen, and that if after such payment anything should be over he should pay the same to said Womack & Welch; and that if the said Hirsch & Adler should bid in said house, then the said Gibbs should receipt to them the amount of their bid as so much money paid him, provided the said Hirsch & Adler should credit their claims against Womack & Welch with the same amount as the receipt of said Gibbs to them; and provided further, that said Gibbs should not receipt to said Hirsch & Adler for a greater sum than their debt unless they should pay him the balance bid, and that if such should be the case the same to be paid over to said Womack & Welch as thereinbefore provided, the whole scope and object of said deed being to secure said Hirsch & Adler in their debt against the assignors, the provisions of said deed to be liberally construed and the said Gibbs to act therein as trustee, &c., as might best prove to the interest of all parties.

Which said deed was duly acknowledged by said John E. Wo-
8 mack and Thomas Welch before a justice of the peace of said county of Independ*a*nce, in due form of law, on the day of the

date thereof, and was filed for record in the office of the recorder of said county on the same day.

Your orator' states that the original of said deed is in possession, and he appends hereto a certified copy of the same, marked as Exhibit B, and prays that the same may be taken as part hereof, while the original is held subject to the order of the court and the inspection of the parties in term-time.

B. Deed Womack & Welch to Gibbs.

Your orator would fur' show that the evidence of the indebtedness of the said Womack & Welch to the said firm of Hirsch & Adler is contained in two promis'ory notes, under seal, of which the following are substantial copies:

$4,000.] "BATESVILLE, ARK., *December* 10*th*, 1859.

"Two years after date we promise to pay to Hirsch & Adler, or bearer, four thousand dollars, bearing ten per cent. from date until paid, value received. Witness our hands and seals.

"JOHN E. WOMACK. [SEAL.]
"THOMAS WELCH." [SEAL.]

9 (Endorsed:) For value received we assign the within note to M. Kaufman & Co. Hirsch & Adler.

6,800 $\frac{38}{100}$.] "BATESVILLE, ARK., *January* 1*st*, 1861.

One day after date we promise to pay to the order of Hirsch & Adler sixty-eight hundred $\frac{38}{100}$ dollars, value received, with interest from date at the rate of ten per cent. per annum. Witness our hands and seals. This is secured by deed of trust from W'm E. Gibbs, esq.

"JOHN E. WOMACK. [L. S.]
"THOMAS WELCH." [L. S.]

(Endorsed:) For value received we assign the within note to M. Kaufman & Co. Hirsch & Adler.

The original' of said notes are in the possession of your orators, and are held by them subject to the order of the court and the inspection of the parties in term-time. Your orators would further show that, as will appear by endorsements on the said notes under seal, the said Hirsch & Adler, on a certain day and year, being on the 29th day of May, 1865, assigned, transferred, and delivered the said notes to your orators for a good and a sufficient consideration moving them thereto.

10 And that on the day and year last af*for*'said the said Hirsch & Adler assigned, transferred, and delivered to your orators their said interest in the said deed of trust, and made upon the same the following endorsement: "For value received we assign all our rights and interest in the within deed of trust to M. Kaufman & Co. May 29, 1865. Hirsch & Adler;" as will fully appear by ref*f*erence to original of the said deed of trust which your orators hold as af*for*'said, subject to the order of the court and to the inspection of parties in term-time.

And your orator' sa*is* that the said Hirsch & Adler were at the time of making said assignment citizens of the State of Louisiana; that said Adler died after said assignment, a citizen of Louisiana, and the said Hirsch is *is* now a citizen of Louisiana.

Your orators would further show that during the existance of the recent rebellion it was impossible, by reason of the resistance to the laws of the United States, to have said mechanic's lein foreclosed.

11 all judicial proceedings in the courts of the United States being inter'upted and suspended during a period of several years within the State of Arkansas.

Also, that before the close of the said rebellion the trustee*d* named in the said deed of trust departed this life, and that there is none left to execute the same.

That the said Thomas Welch also departed this life intestate, being a citizen of the State of Ohio, on or about the day of , 18 , leaving him surviving his wife, Sarah, now married to one John Campbell, and his children and only heirs at law, William Welch and Thomas Welch, who are all residents of the said district, and citizens of the State of Arkansas, and that there is no administration on the estate of the said Thomas Welch, deseased.

That the said John E. Womack is also a citizen of the State of Arkansas, an inhabitant of said district.

12 That the domicil of the said corporation known as the Batesville Institute is in the State of Arkansas, its corporators being all inhabitants of said district.

That on the 12th day of August, 1867, William Byers, who pretended to be the president of said corporation, conspiring with Thomas Cox, to displace said lien and to defraud your orators in the premises, concocted a feigned conveyance, made a feigned deed in the name of said corporation, by said Byers as president of said corporation, to the said Thomas Cox, which recited a pretended order for the sale of said building and lot as made by the board of directors of said Batesville Institute, and so made a show of conveying said property to said Thomas Cox, on some fictitious and imaginary consideration, not realized, and never intended to be realized. The outward semblance of which transaction may be seen by reference to a copy of said deed hereto appended, marked Exhibit C, and made part hereof.

C. Batesville Institute to Cox.

13 Of which your orator' says: 1st. That said Byers at the time of making said deed was not the president of said corporation. 2nd. That there was no board of directors of said corporation in existance at that time. 3rd. That no order of sale was made even by a pretended board. 4th. That all the parties sold and bought with full knowledge of the claims of your orator'. 5th. That the whole transaction was a mere pretence and a fraud, to prevent a revivor of the judgment-lien which had been assigned to your orators, and to deprive your orators of their just rights in the premises. In tender consideration whereof, and for that your orators are remediless by the strict rules of the common law, and only can have adequate relief in a court of chancery, where such matters are properly cognizable, your orators pray that they may be to all the rights of the said Hirsch & Adler under and by virtue of the said mechanic's lien and judgment and the said deed of trust, and that the said corporation known as the Batesville Institute may

14 be required to pay unto your orators the amount of the said judgment, with all interest accrued thereon, and that in default of such payment to your orators, the mechanic's lien upon this said property mentioned in said judgment may be foreclosed, and that the same may be sold to satisfy the said judgment.

And that your orators may have such other and further relief as the equity of their case may require and to your honor shall seem meet, may it please your honor to grant unto your orators a writ or writs of subpœna commanding the said Batesville Institute, Thomas Cox, John E. Womack, John Campbell, and Sarah Campbell, his wife, and Thomas Welch and William Welch to be and appear before this honorable court,

and to make answer to this bill of complaint, and to stand to, abide, and perform all such orders, decrees, and directions as may be made herein.

And your orators will ever pray, &c.

WATKINS & ROSE.

15 I, U. M. Rose, acknowledge myself bound to pay all costs which may accrue in the above cause.

March 3, 1868.

U. M. ROSE. [SEAL.]

This is Exhibit A to bill.

WATKINS & ROSE, *Sol's.*

STATE OF ARKANSAS,
County of Independence:

In the circuit court for said county, March term, A. D. 1861.

JOHN E. WOMACK & THOMAS WELCH, PL'FFS,
vs.
THE BATESVILLE INSTITUTE, DEF'T.

Now, on this day, come the parties af*or*'said by th*is* attorneys, and the said defendant interposed her pleas of nil debit & payment, to which the plaintiff' enter*s* *his* replication, & the defendant joined issue, all, in short, on the record by consent. And neither party requiring a jury, this cause is submitted to the court, sitting as a jury, to try the issues joined.

And the court being fully advised, & after hearing the evidence, finds thereon, the 15th day of January, A. D. 1861, the said plaintiffs
16 filed in the office of the clerk of this court their account for work & labor, &c., done on the building of the said defendant, known as the Batesville Institute, situated on lot No. (8) eight of block No. (13) thirteen, in the town of Batesville, in this county; which said account was verified by affidavit as the law requires, & showed that the work, &c., was done under a written contract with the said defendant by the said plaintiffs. And an abstract thereof was, by the clerk of this court on the day and year af*or*'said, entered on his judgment-docket as the law requires, whereby the said plaintiffs fixed on said house & lot of the said defendant their lien for whatever sum might be due them, &c., for work, &c., done on same. And the court further finding that said lien was fixed within the time that the law requires, and that the said defendant is justly indebted to the said plaintiffs in the sum of twelve thousand four hundred and ninety-one dollars & sixty-seven c'ts,
17 ($12,491.67,) which is, under the law in such case made and provided, a l*ei*n on the said building & lot on the day of the filing, & the interest at 6 per cent. p'r annum, $124.90. It is, therefore, considered by the court, that the said plaintiffs, John E. Womack & Thomas Welch, do have & recover of & from the said defendant, the Batesville Institute, the said sum of twelve thousand four hundred & ninety-one & $\frac{67}{100}$ dollars, for their debt, & the further sum of one hundred & twenty-four $\frac{90}{100}$, being six per cent. interest on said debt from the filing of said l*ei*n to this date.

It is further considered that said debt be a l*ei*n on the said building know' as the Batesville Institute, situated on lot No. 8 of block No. 13, of the town of Batesville af*or*'said, & that the said building & lot be

subject to sale for the debt & damages afor'said. And the clerk of this court is ordered to incorporate the description of the house & lot herein mentioned in the execution to be issued herein, & therein
18 command the sherriff or other officer to cause to be made the said debt, damages, and the costs of this suit, out of said property.

It is further considered that the said plaintiffs do have and recover of & from the said defendant all their costs in & about this suit sustained.

And whereas the sum of $2,000.00 above the sum herein adjudged is claimed by the said plaintiffs, but is shown not yet to be due, on account of the unfinished state of the building, & it is, by consent, expressly entered here that this judgment is no waiver of the rights of any of the parties hereto in relation to said $2,000.00, & said contract, but the same remain without prejudice, &c.

A true copy from the record. In testimony whereof I, Robert Neill, clerk of said court, hereto set my hand and affix the seal of my office, at office in Batesville, on this 20th day of August, A. D. 1867.

[SEAL.] ROBERT NEILL, *Clerk.*

19 *Exhibit "D" to bill.*—WATKINS & ROSE.

Womack & Welch to W. E. Gibbs. Assignment, &c., of mechanic's lein.

Know all men by these presents that we, Thomas Welch and John E. Womack, in consideration of one dollar and the premises hereinafter mentioned, have this day, and do by these presents, sell and convey unto William E. Gibbs our interest in and to a mechanic's lein on the brick building in the town of Batesville, Arkansas, known as the Batesville Institute, and situated on lot No. eight (8) of block No. thirteen (13) of said town, which lein is this day filed in the office of the clerk of the county of Independence, and entered on the judgment-docket according to law. And we do hereby authorize the said Gibbs to use o'r names in enforcing said lein, and in making it effectual in any and all ways legal and equitable that may be necessary.

But it is expressly understood that this sale and assignment
20 *is* made to said Gibbs as trustee merely. And when he shall have enforsed the said lein, by sale or otherwise, he is to hold the proceeds thereof to be and perform the following trusts, that is to say: That whereas the said Womack & Welch are indebted to the said Aaron Hirsch & Israel H. Adler in the sum of about eleven thousand dollars, due by note and account for money lent and material furnished to complete said building: Now, when a sale shall be effected, the said Gibbs is to receive the proceeds, and is to pay the expenses of the necessary proceedings out of them first, and is then to pay the debt due to the said Hirsch & Adler, and if after that is paid anything be over, he is to pay it to the said Womack & Welch.

And if the said Hirsch & Adler shall bid in said house, then the said Gibbs is to receipt to them the amount of their bid, as so much money paid him, provided the said Hirsch & Adler shall credit their
21 claims against Womack & Welch with the same amount as the receipt of said Gibbs to them. And, provided further, that said Gibbs shall not receipt to said Hirsch & Adler for a greater sum than their debt, unless they pay him the balance bid.

Should such be the case, to be paid over to the said Womack & Welch, as hereinbefore provided.

The whole scope and object of this deed being to secure said Hirsch & Adler in their debt against the assignors, the foregoing provisions are to be liberally construed, and the said Gibbs is to act herein as trustee, &c., as may best promote the interest of both and all parties.

Witness our hand and seals this 15th day of January, 1861.

JOHN E. WOMACK. [SEAL.]
THOMAS WELCH. [SEAL.]

STATE OF ARKANSAS, *County of Independance:*

On this day, before me, a justice of the peace in and for said county, come John E. Womack & Thomas Welch, to me well known, and then and there acknowledged that they had executed the foregoing
22 deed of assignment to William E. Gibbs, for the purpose and considerations therein mentioned and set forth.

Given under my hand this 15th day of January, 1861.

M. A. WYCOUGH, *J. P.*

The foregoing instrument of writing was filed for record January 15th, 1861.

JOHN A. PRICE, *Clerk,*
By R. P. MILLER, *D. C.*

STATE OF ARKANSAS, *County of Independance:*

I, Robert Neill, clerk of the circuit court & ex-officio recorder in and for the county af*for*'said, do hereby certify that the foregoing three pages are correctly copied from pages 287 & 288, of book O, of the record of deeds & mortgages in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in Batesville, on the 20th day of August, A. D. 1867.

[SEAL.] ROBERT NEILL,
Clerk and ex-officio Recorder.

23 *Exhibit "C" to bill.*—WATKINS & ROSE.

William Byers, as president of the Batesville Institute, to Tho's Cox. Deed.

This indenture entered into by and between the Batesville Institute, (a body-corporate,) by William Byers, president of said corporation, of the first part, and Thomas Cox, of Batesville, Independance County, State of Arkansas, party of the second part, witnesseth that whereas it was, at a meeting of the board of directors of the Batesville Institute held in the town of Batesville, in Independance County, State of Arkansas, on the tenth day of August, in the year of Christ eighteen hundred and sixty-seven, ordered by the board of directors of the Batesville Institute that William Byers, as president of said corporation, *to* sell and convey unto Thomas Cox, party of the second part, the house and lot belonging to said corporation, to wit: Lot number eight, in block number thirteen, as designated upon the plat of the town of Batesville; it being the lot upon which the house known as the Batesville Institute is situated, for the sum of eighteen thousand dol-
24 lars, payable in six and twelve months from that date, taking his notes therefor, drawing ten p'r cent. interest p'r annum from date till paid, and reserving in the deed thus to be executed to him a lien on the property so sold for the payment of the purchase-money.

And whereas the said Thomas Cox, party of the second part, has executed his notes to the Batesville Institute, one for four thousand dollars, payable six months from date with ten p'r c't p'r annum from due till paid; the other for the sum of four thousand dollars, payable twelve months after date, with ten per cent. interest p'r annum from due till paid, and each dated the tenth day of August, A. D. 1867.

Therefore, be it known that the Batesville Institute, by William Byres, president thereof, party of the first part, for and in consideration of eight thousand dollars, to be paid as afor'said, and the premises afor'said, do grant, bargain, sell, and convey the said lot
25 number eight, in block number thirteen, in the town of Batesville afor'said, with all the buildings, improvements, and appertenanses to the same in anywise belonging or appertaining, unto the said Thomas Cox, party of the second part, his heirs and assigns forever.

Reserving a lein upon said property so sold and conveyed for the payment of the purchase-money specified in the notes aforesaid. To have and to hold the above-described, granted, bargained, & sold property, with all the appertenances and improvements to the same in anywise belonging, unto the said Thomas Cox, his heirs and assignees forever, subject to the lein upon the same for the purchase-money.

In testimony whereof I, William Byers, as president of the Batesville Institute, have hereunto signed my name, and affixed the seal of said corporation, this twelfth day of August, A. D. 1867.

WILLIAM BYRES, [SEAL.]
President Batesville Institute.

Executed in presence of—
[L. S.] E. M. DICKINSON.

26 STATE OF ARKANSAS,
County of Independance, sct:

Be it known that, on this day, personally appeared before me, Robert Neill, clerk of the circuit court within and for the county of Indep'ance, duly commissioned and qualified as such clerk, William Byres, president of the Batesville Institute, and who is personally well known to me to be the president of the corporation known as the Batesville Institute, and to be the person who executed the foregoing deed of conveyance, and who stated before me, as such clerk, that he, as president of said Batesville Institute, had, for and in behalf of the said Batesville Institute, executed the foregoing deed of conveyance for the consideration, uses, and purposes therein mentioned and set forth, and requested me to certify the same; which is done.

In testimony whereof I have hereunto set my hand as such clerk, and affixed the seal of said circuit court, at office, this 12th day of August, A. D. 1867.

[L. S.] ROBERT NEILL, *Clerk.*

[Revenue stamp, $8.00]

27 The foregoing instrument of writing was filed for record in my office on the 12th day of August, A. D. 1867.

ROBERT NEILL,
Clerk and ex-officio Recorder.

STATE OF ARKANSAS,
County of Independance:

I, Robert Neill, cl'k of the circuit court and ex-officio recorder in and for the county afor'said, do hereby certify that the foregoing four pages

contain a true copy of a deed recorded on pages 391 & 392 of *of* book 2 of the records of deeds and mortgages in my office.

In testimony whereof I hereto set my hand, and affix the seal of said court, at office in Batesville, on this 20th day of August, A. D. 1867.

[L. S.] ROBERT NEILL,
Clerk and ex-officio Recorder.

Filed & subpœna issued March 5th, 1868.
CHA'S P. REDMON, *Clerk.*

And on the same day the clerk issued a subpœna ad respondendum, which is in the words & figures following, to wit:

28 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to the Batesville Institute, Thomas Cox, John E. Womack, John Campbell, and Campbell, his wife, and Thomas Welch and William Welch, citizens of the State of Arkansas, greeting:

We command and strictly enjoin upon you that, laying all other matters aside, and, notwithstanding any excuse, you and each of you be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the sixth day of April, A. D. 1868, it being the first Monday of next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by Max Kauffman, Lewis Kauffman, and Calomon Hirsch, partners under the name and style of M. Kauffman & Co., who are citizens of the State of Louisiana, and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit under penalty of what the law directs.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed this fifth day of March, A. D. 1868, and in the ninety-second year of our Independence.

Attest: CHA'S P. REDMOND, *Clerk.*

N. B. The defendants are required to enter their appearance in the above cause in the clerk's office of this court on or before the sixth day of April, 1868, or the bill will be taken pro confesso against them.
CHA'S P. REDMOND, *Clerk.*

29 *Rule for service of process.*

The service of all subpœnas shall be by delivery of a copy thereof, by the officer serving the same, to the defendant personally, or, in case of a husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some free white person who is a member or resident in the family.

Comes to hand March 19th, at 7 o'clock a. m.
A. B. SMITH.

I have served the within subpœna on the within-named Tho's Cox, W'm Welch, and on John Campbell, Campbell, his wife, by giving

to W'm Welch, Mrs. Campbell's son, over 15 years of age, copies for them in presence of E. Baxter, W'm Steel; also, on William Byers, by leaving a copy at his usual place of abode, with a white member of his family over 15 years of age, at Batesville, in the eastern district of Arkansas, on this 21 day of March, A. D. 1868.

ISAAC C. MILLS,
U. S. Marshal for East. Dist. Ark.
By ALBERT B. SMITH,
Deputy Marshal.

Thomas Welch is dead, and John E. Womack cannot be found.

ISAAC C. MILLS,
U. S. Marshal E. D. of Arkansas.
By A. B. SMITH,
D. Marshal.

BATESVILLE, *March* 21, 1868.

(Indorsed:) No. . U. S. circuit court, eastern district of Arkansas. In chancery. M. Kauffman & Co. vs. Batesville Institute et al. Subpœna ad respondendum. Issued March 5, 1868. Returnable April 6th, 1868. Returned and filed March 27, '68. Cha's P. Redmond, clerk. Watkin & Rose, solicitor' for complainant.

30 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 13th day of April, anno Domini one thousand eight hundred and sixty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 14th, 1868, as follows:

M. KAUFFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL. } Bill.

And now come Thomas Cox and the Batesville Institute, by Garland and Nash, their solicitors, and file herein there joint and seperate demur'er to complainants' bill.

Which demurrer is in the words and figures following, to wit:

In the United States circuit court, eastern district of Arkansas. In chancery. April term, A. D. 1868.

M. KAUFMAN & CO., COMP'TS,
vs.
BATESVILLE INSTITUTE ET AL., DEF'TS.

31 The joint and seperate demurrer of Thomas Cox and the Batesville Institute to the said bill of M. Kaufman & Co. exhibited herein against them and other defendants.

These defendants, by protestation, not confessing or acknowledging any or all of the matters and things in said bill contained to be true, as

therein and thereby stated, say that said bill is uncertain and insufficient in law, and they are not bound to answer the same, and they demur thereto, and for cause of demurrer show:

1st. Said complainants show no such title in themselves as authorize a decree herein for them.

2nd. Said bill shows that all right claimed by said complainant' comes or is derived through Hirsch and Adler, and that right in this behalf is imperfect and inchoate, and the said Hirsch and Adler are not parties to said suit, nor is either of them, nor is any one representing them, or either of them party herein.

3rd. Said bill sets up a deed of trust to one Gibbs, for the use of said Hirsch and Adler, but in nowhere appears in said bill that said
32 Hirsch and Adler ever transfer'ed such deed of trust or assignment to complainants or to any one for them.

4th. It appears in and by said bill that said Gibbs died without executing said trust, and the same still remained unexecuted; and said bill does not ask the appointment of another trustee, nor to have such trust executed, nor does it make said Gibbs' legal representative' parties herein.

5th. Said bill shows upon its face that said supposed judgment-lien therein named, or attempted to be set up, accrued, if at all, more than three years next before the bringing of said bill, and that said lien, if it ever existed, is shown to have been lost by lapse of time, and no good and sufficient reason appears in said bill why the same was not preserved and enforced before it was so lost, or why the same was suffered to be lost.

6th. If an assignment or transfer by the said Hirsch and Adler is even aver'ed, there is no sufficient averment in said bill that they could have sued in this court, so as to carry with it (the said assignment or *or* transfer) the right of complainants to sue herein.

33 Wherefore these defendants pray the judgment of the court whether they shall make any further or other answer to said bill.

GARLAND & NASH,
Solicitors for Defendants.

Filed April 14th, 1868.

CHA'S P. REDMOND, *Clerk.*
Per R. L. GOODRICH, *D. C.*

And on April 15th, 1868, as follows:

M. KAUFFMAN & Co.
vs.
BATESVILLE INSTITUTE ET AL.

And now comes said complainants, by Watkins & Rose, their solicitors, and ask leave to amend their bill by interlineation, as follows, by inserting at the foot of page eight the words following, to wit: "And your orator says, that at the time of making said assignments, the said Hirsch & Adler were citizens of the State of Louisiana;" and leave is granted as prayed for, and said interlineation made instanter.

34 And, on April 29th, 1868, as follows, (Hon. Samuel F. Miller, judge of the Supreme Court, assigned to this circuit, presiding:)

M. KAUFMAN & Co.
versus
BATESVILLE INSTITUTE ET AL.

And on this day the demurrer of Thomas Cox and The Batesville[e]

Institute came on to be heard, and the court having heard argument of counsel, and considered of the matters arising on the said demurrer, is of opinion that the law thereupon is for the said plaintiff. It is therefore ordered and considered that the said demurrer be, and the same is hereby, overruled, and the said Cox and The Batesville Institute refusing to answer or plead to said bill herein, and electing to rest on their said demurrer, it is further ordered, considered, and decreed, that the said bill of said plaintiff be taken as true and confessed against said Thomas Cox and The Batesville Institute, and also against John Campbell, and Sarah Campbell, his wife, who have been duly served with process herein, and have failed to plead, answer, or demur to plaint-
35 iff's bill herein; and it appearing that the defendant, Thomas Welch, is dead, leaving no heirs except the said Sarah Campbell and William Welch, his mother and his brother, it is therefore ordered that the suit abate as to him, there being no administration on his estate; and it appearing that defendant, William Welch, is a minor under twenty-one years of age, Frank R. Vaughan is hereby appointed guardian ad litem for said minor, and the said guardian files his written consent to act as such herein, and the said minor, by his said guardian, files his answer herein, to which the plaintiffs file their replication herein; and defendant, John E. Womack, not having been served with process herein, it is ordered that an alias subpœna issue for him.

Which written consent and answer are in the words and figures following, to wit:

United States circuit court, eastern dist. of Ark., April term, 1868.

M. KAUFMAN & CO., PLAINTIFFS,
BATESVILLE INSTITUTE ET AL., DEFENDANTS.

36 I, Frank T. Vaughan, hereby consent to act as guardian ad litem for William Welch, a minor defendant in this suit.

FRANK T. VAUGHAN.

M. KAUFMAN & CO., PLAINTIFFS,
BATESVILLE INSTITUTE ET AL., DEFENDANTS.

The seperate answer of William Welch, a minor defendant, by Frank T. Vaughan, the guardian ad litem.

This defendant, saving and reserving unto himself all and all manner of benefit of exception to be had or taken to the many errors and insufficiencies in said bill contained, for answer thereunto, or unto so much and such parts thereof as he is advised are material for him to make answer unto, answering, says, that he is an infant of tender years, and knows nothing of the matters set up in said bill, and therefore he denies the same, and requires strict proof thereof, and prays that he may in all things have the protection of the court; and having fully answered, he prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM WELCH,
By FRANK R. VAUGHAN,
Guardian ad litem.

Filed April 29th, 1868.

CHAS. P. REDMOND, *Clerk.*

37 Which replication is in words and figures following, to wit:

United States circuit court, eastern district of Arkansas, April term, 1868.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE ET AL., DEFENDANTS.

The replication of the said plaintiffs to the answer of William Welch by his guardian ad litem.

This replicant', saving and reserving all benefit of exception to the many errors, says that they will aver, maintain, and prove their said bill to be true, certain, and sufficient in law, as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* hath already proved.

WATKINS & ROSE.

Filed April 29th, 1868.

CHA'S P. REDMOND, *Clerk*,
Per R. L. GOODRICH, *D. C.*

And on May 1st, 1868, as follows, to wit:

38 M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

And now comes said defendants, by Garland & Nash, their solicitors, and file herein their praye' for an appeal, and also their supersedeas bond, and thereupon it is ordered that said appeal be allowed and said bond approved.

Which prayer for an appeal is in the words and figures following, to wit:

KAUFMAN & CO., COMPLAINANTS,
vs.
BATESVILLE INSTITUTE, THO'S COX, AND others, defendants.

Come said Batesville Institute and Thomas Cox, and pray an appeal from the judgment of the court in the above-entitled cause to the Supreme Court of the United States.

GARLAND & NASH,
Solicitors for Cox and Batesville Institute.

Filed May 1st, 1868.

CHA'S P. REDMOND, *Clerk*,
P'r R. L. GOODRICH, *D. C.*

39 Which bond is in the words and figures following, to wit:

Know all men by these presents that we, Augustus H. Garland, John W. Faust, and Lucius B. Nash, acknowledge ourselves to jointly and severally owe and be indebted to M. Kaufman & Co., said firm com-

posed of Max. Kaufman, Lewis Kaufman, and Calvin Hirsch, in the just and full sum of one thousand dollars, ($1,000.00,) for the payment whereof well and truly to be made, we do hereby bind ourselves each and all of us, our administrators, and our heirs, respectively; conditioned, however, that whereas the Batesville Institute and others are about to take an appeal from the circuit court of the United States for the eastern district of Arkansas, to the Supreme Court of the United States, upon the judgment of such court on a bill of the plaintiffs filed in said court by said Kaufman & Co. against the said Batesville Institute and others, in their demurrer to said bill:

Now if said Batesville Institute et al., plaintiffs in error, shall
40 prosecute said writ of error to effect, and answer all damages and costs if *he* should fail to make the same good, then this bond to be void.

Witness our hands and seals this 30th day of April, 1868.

A. H. GARLAND. [SEAL.]
JNO. W. FAUST. [SEAL.]
LUCIUS B. NASH. [SEAL.]

Approved by order of court, May 1st, 1868.

CHA'S P. REDMOND, *Clerk.*

Filed May 1st, 1868.

CHA'S P. REDMOND, *Clerk.*

And on the 3rd day of August, A. D. 1868, before the clerk at rules, as follows, to wit:

M. KAUFMAN & Co.
vs.
BATESVILLE INSTITUTE ET AL.

And now this day comes into the clerk's office said defendant, John E. Womac, by Garland and Nash, his solicitors, and files herein his answer and exhibits to complainants' bill.

Which answer and exhibits are in the words and figures following, to wit:

41 In the circuit court of the United States within and for the eastern district of the State of Arkansas. In chancery.

MAX KAUFMAN, LEWIS KAUFMAN, AND COLman Hirsch, partners doing business under the firm-name of M. Kaufman & Co., complainants,
vs.
BATESVILLE INSTITUTE, THOMAS COX, JOHN E. Womac, John Campbell, and Sarah Campbell, his wife, Thomas Welch, and William Welch, defendants.

The answer of John E. Womac, one of the defendants, to the bill of complaint of the above-named complainants against him and the other above-named defendants.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be

had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto,
42 this defendant, answering, saith that on the 21st day of March, A. D. 1859, this defendant and one Thomas Welch of Batesville, Independence County, State of Arkansas, were partners in the business of builders, and on that day the said Welch and this defendant entered into a contract with a corporation in the town of Batesville, known as the Batesville Institute, to build a house for the said corporation, of certain dimensions and description in said contract mentioned; for the furnishing of all the material and the completion of such building, the said corporation bound itself to pay the said Welch and this defendant the sum of sixteen thousand eight hundred dollars, as follows, to wit: Fifteen hundred dollars on the first day of May, A. D. 1859; fifteen hundred dollars on the first day of November, 1859, and two thousand dollars on the first day of May, 1860, and the residue, say eleven thousand eight hundred dollars, when the building should be completed and the keys delivered to the said Batesville Institute.

The material for said building *were* all to be of good quality
43 and the work to be executed in a neat, substantial, and workmanlike manner, and the building completed and the keys delivered by the fifteenth day of March, A. D. 1861. Said contract was reduced to writing and executed in duplicate, one retained by the said Batesville Institute, and the other delivered to the said Welch and this defendant, a true copy of which is herewith filed and marked as "Exhibit A, No. 1," to this answer, and made a part hereof, and to which reference is hereto made for greater certainty of its contents, terms, and stipulations; the original being under the control of this defendant, he offers to bring the same into court, and hold the same during term-time subject to the inspection of the parties and the order and direction of the court. And for the faithful performance of said contract this defendant and the said Welch, as principals, and William W. Lewis, William A. Bevans, James W. Butler, John A. Price, and Henry Neil, as their securities, gave bond to the said Batesville Institute in the sum of ten thousand dollars, of the same date of said contract; of which
44 bond, so given, this defendant files herewith a true copy, and marks the same as Exhibit "B," No. 2, and prays that the same may be taken and received as a part of this answer; and to which reference is hereby made for greater certainty of its contents. The original bond is in the possession and under the control the Batesville Institute; and this defendant prays that the said Batesville Institute, by order of this court, be required to produce the same in court, subject to the inspection of the parties and the order of this honorable court. The said Womac & Welch commenced work on said building, and progressed therewith until about the 19th day of December, A. D. 1859, when they found that they would not be able to *able to* proceed with said building without pecuniary assistance to purchase material, pay hands, &c., and made an arrangement with the said Aaron Hirsch and Israel H. Adler, then merchants and partners, doing business in the town of Batesville aforesaid, by the firm-name and style of "Hirsch and Adler," whereby it was agreed by and between the said Hirsch and Adler, and the said Womac and Welch, that the said Hirsch and Adler
45 should advance to the said Womac and Welch a large amount of money and goods, &c., to enable the said Womac and Welch

Exhibit B, No. 2.

Bond of Womac and Welch and others to the Batesville In't.

to purchase materials and pay hands and comply with their contract with the Batesville Institute to build said buildings; and to secure the said Hirsch and Adler in the payment for whatever moneys, goods, &c., which they then had advanced, and which they might thereafter advance, to the said Womac and Welch, to enable them to comply with the said contract, the said Womac and Welch, then and there, executed and delivered to the said Hirsch and Adler their note, under seal, bearing date Batesville, Ark., December 10th, 1859, whereby they promised, two years after date, to pay to Hirsch & Adler, or bearer, four thousand dollars, bearing ten per cent. interest from date until paid, for value received; and to secure the payment of said note, and what advances might be made over and above the amount mentioned in said note, the said John E. Womac, and A. L. Womac, his wife, executed, acknowledged, and delivered to William E. Gibbs, of said county of Independence, a deed of trust, conveying unto the said William E. Gibbs the
46 following-described real estate situate in Independence County aforesaid, and personal property and slaves, to wit: The northeast quarter of section seventeen, township thirteen north of range five west, containing one hundred and sixty acres; the west half of the southeast quarter of section eight; the southeast quarter of the southeast quarter of section eight; the northwest quarter of the northwest of section sixteen; the northeast quarter of the southeast quarter of section eight; the southwest quarter of the southwest quarter of section six; the east half of the northwest quarter of section seventeen; the northwest quarter of the northwest quarter of section seventeen; all in township thirteen north of range No. five west, containing in the aggregate five hundred and twenty acres, more or less. Also one negro woman or girl about eighteen years of age, of dark color, and slave for life, named Mary, together with whatever increase the said negro woman might have; also one horse, three yoke of work-cattle, ten cows and calves, three tables, seven beds and the bedding thereto belonging, twelve chairs, one cooking-stove and fixtures so belonging thereto,
47 the whole of their table-furniture, one wagon, and the farming-utensils then in the possession of John E. Womac; one distillery and the fixtures thereunto belonging. The said Gibbs to have and to hold the same in trust to secure the payment of said note for four thousand dollars and all advancements which might be made by the said Hirsch and Adler to the said Womac and Welch aforesaid, or pay out or assume for them for the purpose aforesaid, or that they might in the future advance to the said John E. Womac individually; and which deed provided that if the said Womac and Welch should pay or cause to be paid to the said Hirsch and Adler said note for four thousand dollars and the interest thereon, according to the tenor and effect thereof, and also pay to them such other and further sums of money as *they* might be due to the said Hirsch and Adler for moneys, goods, wares, and merchandise advanced to the said Womac and Welch by the said Hirsch and Adler within the next two years after the date thereof, and what they might advance to the said John E. Womac within the same time, and the expences of the said trust, that the said William
48 E. Gibbs, as such trustee, was empowered to take said real estate, slave, and personal property into his possession and to sell the same for cash, or on credit, to the highest bidder, at the court-house door of Independence County, or elsewhere where he might it most advantageous' for all the parties concerned, first giving the notice required by law for sales of property under execution at law, and the said Gibbs, as such trustee, should apply the proceeds of the sale of said

property, first, to the payment of the expences of said trust; second, to the payment of said note of four thousand dollars and the interest thereon; third, to the payment of whatever sums of money and goods, &c., sold to them by the said Hirsch and Adler within the two years aforesaid; fifth, that he should pay the remainder of such proceeds, if any, to the said John E. Womac, or to such person as he might direct *it* to be paid to. And it was agreed by the parties to said deed of trust that the said John E. Womac should retain and hold the possession of said real estate, slave, and personal property, and enjoy the rents and profits, labor and use thereof; but if at any time the said Gibbs should be of the opinion that the said property would be
49 liable to be wasted or otherwise rendered insecure, so that the objects of the trust might be defeated, then the said Gibbs was authorized to take possession of said property and carry out said trust, al*l*though the two years therein given had not expired, &c.; and which deed and the trust therein mentioned were accepted by the said William E. Gibbs; and said deed of trust was duly acknowledged and filed for record and recorded in the recorder's office of Independence County aforesaid on the 21st day of December, A. D. 1859, a duly certified transcript of which record of said deed and the acknowledgment thereof is herewith filed and marked as Exhibit D, No. 4, to this answer and made a part hereof; and the original deed not being in the possession or under the control of this defendant, he cannot produce the same in court. And this defendant, further answering, saith that at the said time when the said Womac and wife executed and delivered the deed of trust aforesaid, the said Thomas Welch and Sarah, his wife, also executed and delivered to the said William E. Gibbs a deed of trust conveying to the said Gibbs the following-described property, to wit: That part of section sixteen,
50 township thirteen north of range six west, in Bates addition to the town of Batesville, begin'ing at a rock for a corner on Harrison street at the termination of a line between Allen D. Rammey and Robert Bates; thence south five degrees west on said division-line three hundred and one and a half feet; thence west eight hundred and thirteen feet; thence north three hundred feet; thence east on Harrison street eight hundred and fifteeen feet to the place of begin'ing, containing five and seventy-five hundredths acres, together with appurtenances thereunto belonging; also, two mules of dark-bay color, 5 or 6 years old, one wagon and harness, one negro woman, slave for life, named Peggie, about forty years old, two cows and four calves, one old ox-wagon, to have and to hold said land, slave, and personal property to the said W'm E. Gibbs, as trustee; which deed of trust contained substantially the same provisions and was made for the same objects as the deed of trust made by Womac and wife as aforesaid, to secure the payment of said note of four thousand dollars, and advancements to be made by the said Hirsch and Adler to the
51 said Womac & Welch to enable them to complete said building according to their contract with the Batesville Institute, as aforesaid; which deed of trust so made by the said Welch and wife was duly acknowledged and filed for record in the recorder's office of Independence County aforesaid, on the 21st day of December, A. D. 1859, and duly recorded, and duly certified transcrip s from the record thereof *is* herewith filed, and marked as Exhibit E, No. 5, to this answer, and made a part hereof, and to which ref*f*erence is hereto made for *for* greater certainty of the contents of said deed of trust; and the original deed of trust not being in the

Deed of trust from Womac & wife to W'm E. Gibbs. Exhibit D, No. 4.

Deed of trust from Welch & wife to W. E. Gibbs. Exhibit E. No. 5.

possession or under the control of this defendant, he cannot produce the same in court.

This defendant, further answering, saith that the said Hirsch and Adler, under said arrang'ment and agreement for which said note of four thousand dollars and the deeds of trust by Womac and wife and Welch and wife were given as aforesaid, made advances to the said Womac and Welch to enable them to proceed with the building of
52 said house, until about the 1st of January, A. D. 1861, when, from the unsettled condition of affairs in the country and prospect of there being a war, the said Welch and this defendant became uneasy about the condition of their several homesteads for their families which had been conveyed in trust to the said William E. Gibbs as aforesaid, for the benefit of the said Hirsch & Adler, and were anxious to have them secure, to their respective families, and to secure the said Hirsch and Adler in some other way; and that uneasiness was increased, as the said Hirsch and Adler appeared reluctant about making farther advances to them to enable them to finish said building, according to their contract. And the said Welch and this defendant spoke to the said Hirsch and Adler about the matter, and the said Hirsch and Adler proposed that if we, the said Womac and Welch, would make out our account for the work we had done upon said building under said written contract with the said Batesville Institute, and file the same in the office of clerk of the circuit court of Independence County, and secure a mechanic's lien upon said building, and would assign said mechanic's lien to the said William E. Gibbs, as trustee, to secure
53 them, the said Hirsch and Adler, what might be found due them up to that time by the said Womac and Welch, that they, the said Hirsch and Adler, would direct the said William E. Gibbs to convey the said lands and property described in the deed of trust made by Womac and wife to whomsoever the said John E. Womac might appoint or direct, and the real estate in the deed of trust mentioned, made by the said Welch and wife, to whomsoever the said Thomas Welch might direct and appoint. And, in persuance of such understanding and agreement, the said Hirsch and Adler had a full settlement with the said Womac and Welch up to that time, to wit, the 15th day of January, A. D. 1861, when, by that settlement, including all matters of account between them up to that date, and also the said note of four thousand dollars aforesaid, it being the same note for that *same* mentioned and described in the complainants' bill, the said Womac and Welch were found to owe the said Hirsch and Adler the sum of sixty-eight hundred dollars and thirty-eight cents, and the Womac and Welch then and there executed and delivered their note, under seal
54 to the said Hirsch and Adler, for the said sum of $6,800.38, to draw ten per cent. interest per annum, from the date thereof until paid, payable one day after the date thereof, and dated on the 1st day of January, A. D. 1861, although, in fact, it was executed on the 15th day of January, A. D. 1861, the day said settlement was completed, and the account filed for the obtaining of the mechanic's lien, and the executing of the deed of trust, by Womac and Welch, to the said William E. Gibbs, as trustee, to secure the payment to the said Hirsch and Adler of what was found due them as aforesaid, and the said John E. Womac then and there directed the said Hirsch and Adler to have the said William E. Gibbs convey the property, real and personal, conveyed to him by Womac & wife, to A. L. Womac, wife of the said John E. Womac, as her separate property, to be held by her and her heirs, free from all debts or liabilities of her then or any future

husband; and the said Thomas Welch then and there directed the said Hirsch and Adler to have the said William E. Gibbs, as such trustee, convey the property, real and personal, mentioned in the deed of
55 trust made to him by Welch and wife, as aforesaid, to Sarah Welch, wife of the said Thomas Welch, and her heirs forever, as her seperate property, to be held by her free from all debts and liabilities of her then or any future husband; and the said Hirsch and Adler then and there promised the said Thomas Welch and this defendant that they would have the said William E. Gibbs, as such trustee, make said conveyance to the said A. L. Womac, wife of the said John E. Womac, and Sarah Welch, wife of the said Tho's Welch, as the said John E. Womac and Thomas Welch had requested and directed, so soon as it could be conveniently done. The said promises, so made by the said Hirsch & Adler to the said John E. Womac, and to the Thomas Welch, were only in parol, the said Womac and Welch having the utmost confidence in the honesty and integrity of the said Hirsch and Adler; but the said Hirsch and Adler wholly failed to have said conveyances made according to their promises. This defendant, further answering, admits it to be true that, on or about the 15 day of January, A. D. 1861, the said Welch and this defendant filed their account for the
56 work done and material furnished to the said Batesville Institute, in the erection of said building, under said contract, in the office of the clerk of the circuit court of Independence County aforesaid, situate on lot No. 8 of block No. 13, in the town of Batesville, in said county, which said account was verified by affidavit, and that the work was done under a written contract with the said Batesville Institute for the purpose of securing a mechanic's lien upon the said building, according to the statute in such case made and provided. At the time of the filing of said account the house was not finished, and the whole am't of material furnished and work done was estimated by the said Welch and this defendant to amount to the sum of fourteen thousand three hundred and twenty-six dollars and sixty-seven cents, and that it would require the sum of two thousand four hundred and seventy-three dollars to complete said building according to said contract. An abstract of said account for a mechanic's lien was, by the clerk of said circuit court, entered in the docket for judgment and decrees of said circuit court on the said 15th day of January, A. D. 1861. And
57 this defendant, further answering, saith that the amount of said account filed was for the total value of the materials furnished and the work done by the said Welch and this defendant in the erection of said building, up to that date; and it was not the amount then due the said Womac and Welch by the Batesville Institute, as the said Batesville Institute had made large payments upon said contract to the said Womac and Welch, and there had not been a settlement or account stated between the said Batesville Institute and the said Womac and Welch, at that time, and the filing of said account and entry of an abstract thereof, in the docket for judgements and decrees of said circuit court, was intended to secure a mechanic's lien on the said building for the amount which might be found due to the said Womac and Welch upon said contract, from the said Batesville Institute upon a statement of account and settlement between said parties; and this defendant insists that it did become a lien upon said building from the date of such filing of said account for what sum might be due the said Womac and Welch upon the said contract
58 at that time, as it might be ascertained by a settlement between the parties for the space of one year from the date of filing said account. And this defendant filed herewith a duly certified transcript of

Abstract of acc't filed, &c.

Exhibit C, No. 3, to this answer.

the abstract of said account filed as aforesaid, entered in the judgment-docket aforesaid, and makes the same as Exhibit C., No. 3, to the answer, and prays that the same may be made and taken as a part of this answer, to which reference is hereto made for greater certainty of description & its contents. And this defendant cannot file herewith a copy of the account so filed, because the same has became lost or mislaid, and the clerk of said circuit court cannot furnish a transcrip' thereof. This defendant, further answering, saith that on the said fifteenth day of January, A. D. 1861, the said Hirsch and Adler and the said Womac and Welch had a final and full settlement of all matters of account and indebtedness between them, and upon such settlement the said Womac and Welch were found to be due the said Hirsch and Adler the sum of sixty-eight hundred & $\frac{38}{100}$ dollars, including in said settlement all notes,
59 accounts, deeds of trust, and mortgages up to that date, and no more. And the said Thomas Welch and this defendant then and there executed and delivered to the said Hirsch and Adler their writing obligatory for that sum, payable one day after date, and to draw interest from the date thereof, at the rate of ten per cent. per annum, until paid, which writing obligatory was dated Batesville, Arkansas, Jan'y 1st, 1859, it being the same note for that sum of money mentioned and set forth in the complainants' bill, and which the said complainants state they have in their possession, or under their control. And this defendant prays that the said complainants may, by order of this honorable court, be required to produce the same in court, and hold the same subject to the inspection of the parties, and the order and direction of your honorable court.

This defendant, further answering, saith that he does not owe the said Hirsch and Adler, or the said complainants, as their assignees, the said writing obligatory for the sum of four thousand dollars, dated
60 Batesville, Ark., December 10th, 1859, payable two years after date, made by the said Thomas Welch and this defendant, mentioned and set forth in the complainants' bill, as the said writing obligatory, and the deeds of trust hereinbefore mentioned as having been executed by the said Thomas Welch and wife and this defendant and wife, to William E. Gibbs, to secure the payment of the said writing obligatory to the said Hirsch and Adler, were in the settlement aforesaid when the writing obligatory for $6,800.38 was given, and were considered by all the parties thereto as cancelled and fully settled and paid. And the said Hirsch and Adler then and there (at the time said settlement was made) promised the said *the said* Thomas Welch and this defendant that they would direct and have the said William E. Gibbs, the trustee in said deeds of trust mentioned, convey the lands and other property therein mentioned, which this defendant and his wife had conveyed to the said Gibbs in trust as aforesaid, *to be conveyed* to who'ever this defendant might name or appoint; and the lands so conveyed by the said Welch and wife to the said Gibbs, as trustee aforesaid,
61 *to be conveyed* to whomsoever the said Welch might name or appoint. Yet the said Hirsch and Adler wholly failed to have the said William E. Gibbs, as such trustee, convey the property in said deeds of trust mentioned. And the said William E. Gibbs afterwards died without having made such conveyances, or either of them, and the same remains as yet unconveyed. And afterwards A. L. Womac, wife of this defendant, died, after which this defendant applied to the said Aaron Hirsch to have such conveyance made to the youngest child of this defendant of the property mentioned and described in the said deed

of trust made by this defendant and his wife to the said William E. Gibbs, when the said Hirsch informed this defendant that he had released and relinquished the real estate, slaves, and personal property in the deed of trust made by the said Tho's Welch and wife to the said Sarah Welch and the children of the said Thomas Welch, and promised to release and relinquish the property, real and personal, and slave, (mentioned in the deed of trust made by this defendant and his wife as aforesaid,) to the youngest child of this defendant. But the said Hirsch has wholly failed
62 to do as he thus promised, and the same remains wholly unconveyed. And this defendant charges that the said Hirsch and Adler have acted in bad faith towards this defendant, and the said Thomas Welch, as they well knew, before they made, or pretended to make, an assignment of said four thousand dollar note to the said complainants, that said note had been fully paid and satisfied, and that this defendant and the said Welch did not owe any part thereof; and, also, in not having the said William E. Gibbs, as such trustee, convey said property to the wife of this defendant, and Thomas Welch, as they agreed to do, as hereinbefore stated.

And this defendant, further answering, saith that it is true that the said Thomas Welch and this defendant did, on or about the 15th day of January, A. D. 1861, execute, acknowledge, and deliver a deed of conveyance, commonly called a deed of trust, to the said William E. Gibbs, as trustee, whereby we conveyed, or attempted to convey, to said Gibbs, as such trustee, our interest in and to a mechanics' lien on the brick building in the town of Batesville, Arkansas, known as
63 the Batesville Institute, and situate on lot No. eight, (8,) of block No. thirteen, (13,) of said town; which lien was that day filed in the office of the clerk of the county of Independence, and an abstract thereof entered on the judgment-docket, and authorised the said Gibbs, as trustee, to use our names in enforcing said lien, and in making it effectual in any and all ways, legal and equitable, which might be necessary, and that when the said Gibbs, as such trustee, should enforce said lien, by sale or otherwise, he was to hold the proceeds thereof to perform certain trust; that is to say, when the said Gibbs should receive such proceeds, he should pay the expences of the necessary proceedings in carrying out said trust; then to pay what might be due the said Hirsch and Adler by the said Welch and this defendant; and if there should be anything over, he was to pay it to the said Womac and Welch. A transcript from the record of said deed of trust is filed with the complainants' bill, and marked as Exhibit "B" to said bill, which
64 copy of said deed, so filed, this defendant supposes to be correct, and this defendant makes the same an exhibit to this answer, and prays that the same may be made and taken as a part hereof. And the complainants allege they have the possession of said deed of trust; and this defendant prays that, by order of court, they be required to produce the same in court during term-time, and to hold the same subject to the inspection of the parties, and the order and direction of this honorable court, and that if there should be any variance between the copy filed with the bill and the original deed of trust, the same may be corrected.

And this defendant, further answering, saith that of his own personal knowledge he knows it to be true that, at the time the said deed of trust was executed, *that* the said Womac and Welch were not indebted to the said Hirsch and Adler in the sum of about eleven thousand dollars, by note and account for money lent and material furnished to complete

said building, as is alleged in said deed of trust; but, on the con-
65 trary thereof, the said Womac and Welch were only indebted to the said Hirsch and Adler in the sum of $6,800.38, the amount in said note or writing obligatory mentioned, *for that sum*, and the said Hirsch and Adler well knew the same; that that amount was all that the said Womac and Welch owed them at that time, and no more, and it is mentioned in said writing obligatory that it was secured by said deed of trust to the said William E. Gibbs. And it was then distinctly understood and known to the said Hirsch & Adler, and the said Welch, and this defendant, that the amount mentioned in the said writing obligatory was the only amount which the said Womac and Welch then owed the said Hirsch and Adler, and the only amount that was intended to be secured or covered by the said deed of trust, conveying said mechanics' lien to the said William E. Gibbs, and the amount of "about eleven thousand dollars" was mentioned in said deed of trust by the draftsman of the deed of trust *merely* as a sum sufficient to cover all indebtedness from the said Womac and Welch, and other objects, *by* the
66 said Hirsch and Adler, than to collect that amount from the said Womac and Welch; and it was distinctly understood and agreed between the said Hirsch and Adler, and the said Welch and this defendant, that they, the said Hirsch and Adler, should procure the said William E. Gibbs, as such trustee, to commence proceedings in the name of Womac and Welch, to enforce said mechanic's lien upon said building within one year next after the filing of said lien, and to prosecute said suit or proceedings with due diligence to a judgment, in the circuit court of Independence County, aforesaid, which judgment would be a lien upon said building and premises for the space of three years from the day of its rendition, and that the said Hirsch and Adler should cause the said Gibbs to enforce said lien by the sale of said property, or otherwise, within three years next after the rendition of the judgment within the period of the judgment-lien; and the said Hirsch and Adler also promised the said Welch and this defendant if they would execute
67 and deliver the said deed of trust to the said William E. Gibbs, conveying to him said mechanics' lien, that they would advance to and aid the said Welch and this defendant to complete said building according to said contract with the Batesville Institute, and the said Welch and this defendant, at that time being considerably in debt, were not able to furnish the means to complete said building without aid from some person or persons; and with a view to secure to the said Hirsch and Adler what they really owed them, and to obtain their aid in procuring means to complete the said building, according to their contract, as aforesaid, the said Welch and this defendant executed the said deed of trust to the said Gibbs as aforesaid.

And this defendant, further answering, saith that it was then and there, to wit, on the 15th day of January, A. D. 1861, further agreed by and between the said Hirsch and Adler, and the said Welch and this defendant, that as the said building was not completed according
68 to said contract, and the said Womac and Welch had not delivered the possession of said house, or the keys thereof, to the said Batesville Institute, (except the Masonic hall and the rooms pertaining thereto in the third story, which, by the terms of association, were to be occupied by the Masonic fraternity free of charge, and *the possession of* which hall, and rooms pertaining to said hall, *was*, by the direction of the said Batesville Institute, delivered into the possession and control of the Masonic fraternity,) and the said Hirsch and Adler having had the use of store-rooms on the lower story for the year previous thereto,

for which they had promised the said Welch and this defendant to pay them what the use thereof was reasonably worth per an'um, that they should have the possession of all of said house, except the Masonic hall, and rooms pertaining thereto, and the rents, issues, and profits thereof, until the time should expire at which the said Welch and this defendant were to have said building completed, and to deliver the keys thereof to the Batesville Institute, or until the debt
69 which we owed them, as aforesaid, should be paid, or until the house should be sold under said lien, if sold before the lien should expire, and apply the rents and profits thereof to the payment of said debt, which we owed the said Hirsch and Adler as aforesaid, and that we would account for the same in our settlement with the said Batesville Institute, and that they should pay a reasonable and fair rent for the same until it should be sold under said mechanic's lien, or the possession thereof delivered to the said Womac and Welch, or to the Batesville Institute. And, in consideration of the transfer of the said mechanic's lien to the said Gibbs as such trustee, and of the agreement that they, the said Hirsch and Adler, should have the possession, issues, rents, and profits of said house, as hereinbefore stated, they, the said Hirch and Adler, agreed to and with this defendant and the said Thomas Welch, that they would make all necessary advancements to the said Womac and Welch to enable them to complete said building in all things in accordance with their
70 contract with the Batesville Institute by the time specified in said contract that said building should be completed and the keys and possesssion thereof delivered to the said Batesville Institute. And this defendant, further answering, admits that such proceedings were had upon said mechanics' lien in the circuit court of Independence County aforesaid, and by consent of the parties; that a judgment was rendered on the 21st day of March, A. D. 1861, by said court, in favor of the said Womac and Welch against the said Batesville Institute, for the sum of twelve thousand four hundred and ninety-one dollars and sixty-seven cents, for their debt, and the further sum of one hundred and twenty-four dollars and ninety cents damages; and that said debt be a lien on the said building, known as the Batesville Institute aforesaid; and the clerk of said court was ordered by said judgment to incorporate a description of the house and lot therein mentioned in the execution to be issued thereon, and command the sheriff or
71 other officer to cause to be made said debt, damages, and the cost of that suit, out of said property; and that said plaintiffs recover of and from the defendant all their costs, &c.; and said judgment recites "that whereas the sum of $2,000.00 above the sum herein adjudged is claimed by the said plaintiff, but is shown not yet to be due, on account of the unfinished state of the building, it is, by consent, expres'ly entered here that this judgment is no waiver of the rights of any of the parties hereto in relation to the said $2,000.00 and said contract, but the same remain without prejudice." A copy of which judgment is attached to the complainants' bill, and marked Exhibit "A," and made a part thereof, and which copy of said judgment is also made an exhibit to this answer, and prayed to be made and taken as a part hereof, and to which reference is hereto made for greater certainty of the contents of said judgment. This defendant, further answering, showeth that was the distinct understanding of all the parties interested in said judgment that said judgment was no waiver on
72 the part of the Batesville Institute of any of its rights, under the contract for the building of said house with the said Womac

and Welch, as against the said Womac and Welch, and that it was no waiver of any right of Womac and Welch against the Batesville Institute, if they should complete said building according to said contract.

This defendant, further answering, saith that at the time the said judgment was so rendered by the said circuit court against the said Batesville Institute, in favor of the said Womac and Welch, upon said mechanics' lien, so filed as aforesaid, there had no settlement been made between the said Womac and Welch and the said Batesville Institute, as to what the said Batesville Institute had paid to said Womac and Welch upon said contract for the building of said house; and it was not known the actual amount due from the said Batesville Institute to the said Womac and Welch upon said contract, when said building should be completed according to said contract; and the said Hirsch and Adler insisted that they must have a judgment upon said
73 mechanics' lien so filed before they would make the necessary advancements to enable the said Womac and Welch to complete said building, and as the time had then passed when the said Womac and Welch, by their said contract, should have had the building completed and the keys turned over to the Batesville Institute, by the fifteenth of March, A. D. 1861, the last payment of eleven thousand eight hundred dollars was not due; and the Batesville Institute was desirous to have the building completed immediately, but declined to make any further payment until the building should be completed; and the said Womac and Welch then and there informed *the* W'm Byers, the president of the Batesville Institute, that they could not complete the building without they could get pecuniary aid, and that they did not know how they could procure that aid unless judgment should be given upon said mechanics' lien; that the said Hirsch and Adler had promised them, if they would procure said judgment, which would be a lien on said house, it would secure them, Hirsch and Adler,
74 in what the said Womac and Welch then owed them, and all advancements which they might make to complete the building. And the said Aaron Hirsch, in behalf of Hirsch and Adler, then and there assured the said Byers, president of the Batesville Institute, that all they desired was for a judgment to be rendered upon said mechanics' lien, which would secure the said Hirsch and Adler in the actual amount due them by the said Womac and Welch, and for all advancements which they might make to the said Womac and Welch to enable them to complete said building according to their contract. And the said Hirsch and Adler then and there promised the Batesville Institute, if it would permit said judgment to be rendered, that they would guarantee that the said Womac and Welch would complete the building in all things according to their said contract immediately after that date; and that, if the said Womac and Welch did not do so, that they, the said Hirsch and Adler, would have the same done without delay.

75 Whereupon the said Byers, president of the said Batesville Institute, in behalf of said institute, consented that said judgment might be rendered, but that it should only be a lien against said building to the extent of what the said Batesville Institute might owe the said Womac and Welch when the building should be fully completed, upon a fair settlement and stating of accounts between the Batesville Institute and the said Womac and Welch. And the said Womac and Welch then and there agreed to and with the said Batesville Institute, if it would permit said judgment to be rendered, that it should only be a lien to the extent of what the said Batesville Institute might be

oweing the said Womac and Welch, upon final settlement when the building should be completed, all of which was then known and consented to by the said Hirsch and Adler and the said William E. Gibbs, trustee, as aforesaid. And upon these terms *terms*, and none other, the Batesville Institute consented that said judgment might be rendered, and which was accordingly rendered.

76 And this defendant, further answering, saith that the said Batesville Institute paid the said Womac and Welch, under said contract, the first payment of fifteen hundred dollars by the first day of May, A. D. 1859. And also the second payment of fifteen hundred dollars by the first of November, A. D. 1859. And also the third payment of two thousand dollars by the first day of May, A. D. 1860. And on the fourth and last payment the said Batesville Institute has paid the sum of about two thousand dollars; one thousand dollars of which was paid by William Byers, at the direction of this defendant, to the said Hirsch and Adler. The other thousand dollars was paid by the said William Byers, by flour, meal, &c., from the Valley Mills, and by advancements made by him to the said Womac and Welch in various ways, which would leave a ballance due on said contract (if the building had entirely completed) of nine thousand eight hundred dollars. But it was estimated by the said Womac and Welch, at the time they filed said mechanics' lien, that it would require the sum of two thousand

77 four hundred and seventy-three dollars to complete the building according to the contract, which, deducted from the said sum of $9,800.00, would leave a ballance of $7,327.00 of work due at that time which had not been paid for, but which was not then due, and would only become due when the building should be completed. And said judgment was only intended to be a lien upon said house for said sum, and the said sum of $2,473.00, when the building should be completed, and only to be enforced when it should become due according to the terms of the contract (on) when the building should be completed according to the contract. Hence it was that the said Womac and Welch's rights were reserved as to the two thousand dollars mentioned in said judgment, and the Batesville Institute's rights under the contract were reserved to it in said judgment.

And this defendant, further answering, saith that the said Hirsch and Adler had possession of and enjoyed the rents and profits of the lower story or store-rooms of the said building

78 during the greater part of the year, A. D. 1860, under the said Womac and Welch, for which they promised to allow or pay the said Womac and Welch what the said use or occupation of said rooms for that year was reasonably worth, and take good care of and keep the building in good repair. And this defendant saith that the same was reasonably worth the sum of twelve hundred dollars, or some other large sum, and not less than the sum of eight hundred dollars, for the time they occupied and used the same in the year A. D. 1860.

This defendant, further answering, saith that the said Hirsch and Adler, and those who have held the same under them, have had and held the possession of said building, and every part thereof, except the Masonic hall, and rooms appertaining to said hall, from the first day of January, A. D. 1861, up to the present time, and that by their agreement with this defendant and the said Thomas Welch, promised to pay to the said Womac and Welch, or allow to them, on their indebted-

79 ness to the said Hirsch and Adler, what the rent, use, and occupation of the same was reasonably worth per annum, so long as they should hold the possession of the same, and to keep the said build-

ing in good repair. And this defendant saith that the use and occupation of the said building (other than the Masonic hall, and rooms appertaining thereto) was reasonably worth per annum the sum of two thousand five hundred dollars, or some other large sum, and not less than fifteen hundred dollars per annum.

And this defendant, further answering, saith that the rents, issues, and profits, and occupation of the said building up to this time had and received by the said Hirsch and Adler, and the said complainants, largely overpays what the said Womac and Welch owed the said Hirsch and Adler, and which was more than paid by the said Womac and Welch, in manner aforesaid, before the said notes were assigned by Hirsch and Adler to the complainants, and of which fact the said complainants, or at least one of them, viz, Colman Hirsch, had notice.

80 And this defendant files herewith a statement of the account between the said Hirsch and Adler, and the said Womac and Welch, from the time the said Womac and Welch made said note of $6,800.00 to the said Hirsch and Adler up to the 1st of July, 1868, and the complainants, who claim to hold said note and the possession of said building, under the said Hirsch and Adler, and marks the same as Exhibit E, No. 6, and makes the same a part of this answer, including the rents and profits of said house, and the damages done to said house by not keeping it in repair, according to their contract with the said Womac and Welch, which account, so stated, this defendant offers to maintain and prove, as this honorable court may direct, and from which it will appear that the said Hirsch and Adler, and the complainants, are largely indebted to this defendant, as surviveing partner of the said Womac and Welch.

And this defendant, further answering, saith that after said judgment was rendered, the said Hirsch and Adler did not, as they agreed to do, make advancements to the said Womac and Welch,

81 to enable them to complete said building according to their said contract with the said Batesville Institute.

And the said Womac and Welch, in fact and truth, never did complete the said building, as by their contract they were bound to do, and as agreed to be done if the Batesville Institute would consent that said judgment should be rendered. And the said Hirsch and Adler did not have said house completed according to their agreement with the Batesville Institute, in consideration that said Batesville Institute would consent that said judgment should be rendered. And the said house remains unfinished and uncompleted to this day; and, in consequence of it not being finished and completed, (the roof being defective and not completed,) the said house has become greatly damaged and injured.

And this defendant is informed, and believes it to be true, and so charges the fact to be, that the Batesville Institute, frequently before it sold said premises to Thomas Cox, one of the defendants to this

82 bill of complaint, demanded the possession of said house from the said Hirsch and Adler and those holding under them, and demanded and required the said Hirsch and Adler, and those holding under them, to keep said building in good repair; but the said Hirsch and Adler, and those holding under them, each refused to deliver the possession thereof to the said Batesville Institute, and also refused to repair said house, or any part thereof, and by their willful negligence and obstinacy have caused the said house to be greatly damaged and depreciated in value, to wit, in the sum of ten thousand dollars, or some other large sum, and not less than five thousand dollars, and it would now re-

quire more than that sum to complete said building according to the contract of the said Womac and Welch with the said Batesville Institute. The war coming on, and the embarrassed condition of the said Womac and Welch, and the said Hirsch and Adler failing, refuseing, and neglecting to make advances, in money and otherwise,
83 to them to enable them to complete and finish said building, according to their said contract, they, the said Womac and Welch, could not complete said building according to said contract. The said Thomas Welch has died, and his estate is wholly insolvent, and this defendant is destitute of means and wholly unable to finish said building. And the said Womac and Welch promised the said Batesville Institute to account to and with it for all the rents and profits of the said building for and during the time which the said Hirsch and Adler might hold and enjoy the same. And this defendant prays that an account may be taken and stated as between the said Womac and Welch, and the said Hirsch and Adler, and those who have occupied said building under the said Hirsch and Adler, for the rents and profits of said building, and for the damage they have done, or caused to be done, to said building, by their neglect to keep the same in repair according to
84 their contract, and that they may be decreed by this honorable court whatever may be found due to this defendant, as the surviving partner of the said firm of Womac and Welch; and that an account may be taken and stated between the said Womac and Welch and the said Batesville Institute, and that in the stating of such account the Batesville Institute may be allowed whatever sum or sums may be allowed the said Womac and Welch against the said Hirsch and Adler, and those holding under them, for the rents and profits, use and occupation of said building, and damages to said building, caused for the want of proper repairs, &c., and that whatever may be found due from said Batesville Institute to this defendant, as such surviving partner, *and that* it be decreed to pay the same to this defendant as such surviving partner.

This defendant, further answering, admits the death of the said William E. Gibbs, as charged in said bill; also the death of Israel H. Adler, as is charged in said bill; also the death of Thomas Welch, and that
85 he left him surviving, Sarah Welch, his widow, and William Welch and Thomas Welch, his children and only heirs-at-law, each of whom *are* minors, under the age of twenty-one years.

This defendant also admits it to be true that the said Sarah Welch has intermarried with one John Campbell, as is charged in said bill. This defendant, further answering, saith that the said Hirsch and Adler were residents of Batesville at the time said judgment, on said mechanics' lien, was rendered, and one or other of them continued to be residents of the State of Arkansas until about the middle of the year A. D. 1864, and that the terms of the circuit court of Independence County were held for years after the rendition of said judgment, and the said Hirsch and Adler might have procured execution to have been issued thereon, if they had performed their part of the contract, and had the said house and lot sold and made the debt which was actually due. This defendant, further answering, saith that he is informed, and believes it to be true, that the Batesville Institute, on or about the 12th day of August, A. D. 1867, sold and conveyed said
86 building, and the lot upon which it is situate, to Thomas Cox, for a valuable consideration, and that this defendant believed said conveyance and sale w*as* made in good faith, for the consideration in the said deed of conveyance mentioned, and without view or intent to de-

fraud the said complainants, the said Hirsch and Adler, or any other person; a copy of which deed of conveyance, conveying said property to the said Thomas Cox, is filed with the complainants' bill, and marked as Exhibit "6," thereto, and made a part thereof, and which is also hereby made an exhibit to this answer, and prayed to be taken as a part thereof, and to which reference is hereto made for greater certainty as to its contents. This defendant, further answering, denies that the said complainants are the legal owners of the said notes and deeds of trust in said bill of complaint mentioned, or the equitable owners thereof, in manner and form as is charged in said bill, or otherwise, as this defend-
ant is informed, and believes, that the said Hirsch and Adler, on or
87 about 14th day of October, A. D. 1865, assigned and transferred all their interest in said notes and deeds of trust, in said bill mentioned, to one C. Hirsch, by deed, duly executed, and that the said C. Hirsch commenced proceedings in the circuit court of Independence County, Arkansas, to have a trustee appointed instead of the said William E. Gibbs, deceased, to execute said trust.

This defendant has no personal knowledge of the alleged assignment of said notes and deed of trust by the said Hirsch and Adler to the said complainants, or information thereof, other than what appears in said bill. And this defendant requires strict proof of the said complainants thereof, and more especially so, as one C. Hirsch, who claims to be a citizen of Louisiana, claims that said notes and deeds of trust were assigned to him by the said Hirsch and Adler, by deed duly executed, on the 14th day of October, A. D. 1865. And the complainants show by
their bill that the supposed assignment to them was and is without
88 date, and may have been made subsequent to the supposed assignment of the same to the said C. Hirsch. And this defendant prays the protection of this court, and that the said plaintiffs must show their prior, legal, and equitable right to said claims as against the said C. Hirsch.

This defendant, further answering, submits to this honorable court, if the said complainants, in and by their said bill, have stated or set forth in their bill of complaint such a case as entitles them to any relief in equity, that, as assignees, the said complainants had a full, perfect, and adequate remedy against this defendant at law.

And this defendant will claim all benefit of any and every defect in the said bill of complaint, at the hearing, as fully and to the same extent as if he had demurred thereto in apt time and form. And this defendant denies all unlawful combination wherewith he is charged in said bill of complaint, without that any other matter or thing material
for him to make answer to, and not herein sufficiently answered,
89 avoided, or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is re'dy to aver and prove, as this court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN E. WOMACK.

GARLAND AND NASH,
Solicitors.

UNITED STATES OF AMERICA,
Eastern District of Arkansas, sct.:

On this day personally appeared before me, Tho's E. Erwin, commissioner of the United States, appointed to take testimony, depositions, and affidavits, and duly qualified as such commissioner, John E. Womac,

and made oath, the above and foregoing answer subscribed by him had been carefully read to him, *and* that he knows the contents thereof, and that the matters and things therein stated are true, of his
90 own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters, he believes to be true; and that said answer is true to the best and utmost of his knowledge, information, and belief.

THO'S E. ERWIN,
U. S. Commissioner, Woodruff County, Arkansas.

AUGUSTA, ARKANSAS, *June 26th*, 1868.

Filed August 3rd, 1868.

CHA'S P. REDMOND, *Clerk*,
Per R. L. GOODRICH, *D. C.*

91 Which Exhibit A, No. 1, is in the words & figures following, to wit:

This memorandum of agreement, made and entered into by and between the Batesville Institute, party of the first part, and John E. Womack & Thomas Welch of the second part, witnesseth, that the said party of the second part, for and in consideration of sixteen thousand eight hundred dollars, to be paid to them by the party of the first part, in the manner and at the time hereinafter stated, covenants to and with the said party of the first part, to build a house for the said party of the first part, in the town of Batesvill', upon the site where the late house, called the Batesville Institute. The said house to be sixty feet wide and ninety feet long and three stories high; rock foundation or basement-story; and the three stories to be of brick. The house to be upon a plan hereto annexed. The first story, in the front part of the house, to be twelve feet high in the clear between the floor and the
92 plastering. The second story, in the front, to be eleven feet high in the clear between the floor and the ceiling or plastering. The third story, in front, to be sixteen feet six inches high in the clear between the floor and ceiling. The first story, in the back part of the building, to be eleven feet in the clear, the second story to be fifteen feet in the clear, and the third story so that the house will be the same hight in the front and back part'. The division-walls to be of brick, wherever so indicated on the plan hereto attached, and the other partition-wall to be frame-work. The first story to be store-rooms & counting-rooms, and an entranc' to the other story. The second story to have a large hall, library-room, offices, and passages or halls indicated in the plan hereto attached. The third story to have Masonic hall, Odd-Fellows' hall, and rooms, &c., as indicated on the plan hereto attached, and above the third story there are to be parapet-walls all round the house, sufficiently high to protect the roof, and sufficiently high
93 to secure or have the indentations for the lettering, as indicated on the plan. The roof to be of tin, corregated iron, or some other substantial fire-proof material. And there is to be a belfry, of the proper size and character to corraspond with the general appearance of the house. The front of the house is to have brick pilasters, with stone base and capitols, as indicated or the draft or plan of the house; and rock door and window sills all around the house, & rock caps in the front of the house. The two first stories, and over the circular windows of the third story, plastered and painted caps, in imitation of rock; and the parapet-walls coped with rock, three and one-half inches

thick, with sufficient projections over the walls. The windows to be 12-light windows, 12 by 24 inches glass. All of the doors in front of the house to be double-sash doors. The doors to have transams, and to be of proper size to correspond with the stories, windows, &c.

The house to be plastered complete; all to be two-coat work,
94 except in the large hall on the second story, called on the plan hereto attached Ruddell hall, and the Masonic hall, which is to be three-coat work, with center-piece, w th stucco cornices, equal in appearance and beauty at least to the center-pieces and cornices which were in what was called the Town hall and Masonic hall in the late building of the institute, which was destroyed by fire. The house to be painted complete, outside and inside, wherever it shall be necessary to be painted.

There *is* also to be two cisterns built at the back end of the house, at the corner, thereof, at the points indicated on the plan of the house, of as large a size as can be made at these points. Said cistern' to be sunk into the ground six feet, and floored with well-burnt brick, or rock, and the walls of the cistern' to be at least 13 inches thick, and to be plastered complete by hydraulic cement, and to be raised so high that the floor of the poarch at the back end of the house will rest
95 on the top of the cistern'. The cisterns to be well covered, and furnished in every particular complete.

There is also to be a poarch at the back end of the house the width of the house, and the poarch is to be suffeciently wid' to cover this cistern' af*for*'said, with plank roof, painted with fire-proof paint.

The said parties of the second part are to furnish the material of every kind and description whatever for said house to fully complete it in every respect, (except the rubbish and what materials are left of the building lately destroyed by fire, which they are to have,) and to do all the work of every description or kind whatever necessary to the full and perfect completion of said house, and to finish said house and appendages herein named or indicated upon the plan of house hereto attached, including stair-steps to the front door, and also including one iron balustrade extending accross on the whole w*ea*dth of the
96 front of the house, the balestrade to be *to be* three feet wide & finished in a neat manner and in a style corresponding with the character of *of* the house; the work to be done in a neat, substantial, and workmanlike manner, and the materials are to be of the best quality. No bad work or bad material to received in the building.

The whole to be subject to the inspection of the building committee of the Batesville Institute. The building to be completed and the key delivered by the 15th day of March, A. D. 1861.

In consideration of which undertaking of the said party of the second part, the said party of the first part binds himself to pay the said party of the second part the said sum of sixteen thousand eight hundred dollars as follows, to wit: Fifteen hundred dollars on the first day of May next; fifteen hundred dollars on the first day of November next, and two thousand dollars on the first day of May, A. D.
97 1860. And the residue, say eleven thousand eight hundred dollars, when the building is completed and the keys delivered.

And it is distinctly understood by the parties to this agreement that for any slight variation from the plan of the building hereto attached and specified in this agreement mad' by the direction of the building committee, if the work shall not *not* have to be done over again, there is to be no extra charge.

The outside walls of said building are to be of the following thick-

ness: The first story to be 22 inches thick; the second story 18 inches thick, and the third story 13 inches thick. The inside walls to be of sufficient thickness to be substantial. The house is to be finished neatly, and the chimneys cap'ed with rock. In short, everything connected with said house is to be made and done in a style and character corresponding with the character and design of the house as to its architecture, beauty, and strength, and durability of the building.

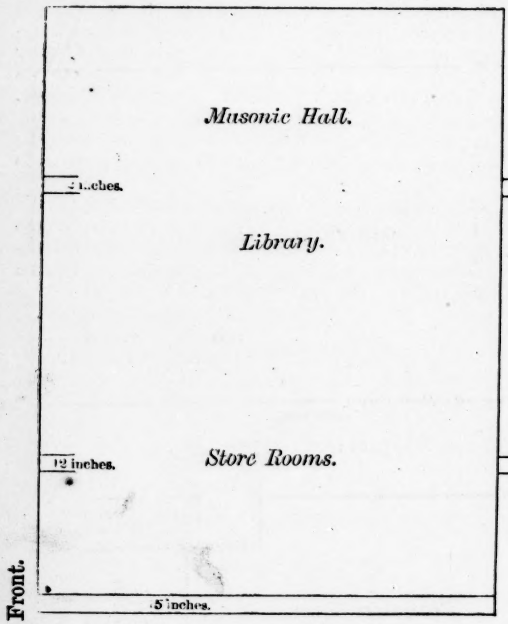
98 And if there are any things not mentioned in this agreement or indicated in the plan hereto attached which may be necessary to a complete finish of the house, the said party of the second part is to do the same.

In testimony whereof William Byers, as president of the Batesville Institute, for and in behalf of the said Batesville Institute, has hereunto set his hand; and William P. Byers, as secretary of the Batesville Institute, attested the same; and the said parties of the second part have hereunto set our hands this 21st day of March, 1859.

W. BYERS, *President.*
JOHN E. WOMACK.
THOMAS WELCH.

Attest:
W. PRESTON BYERS, *Secretary.*

(Here follows diagram marked page 99.)



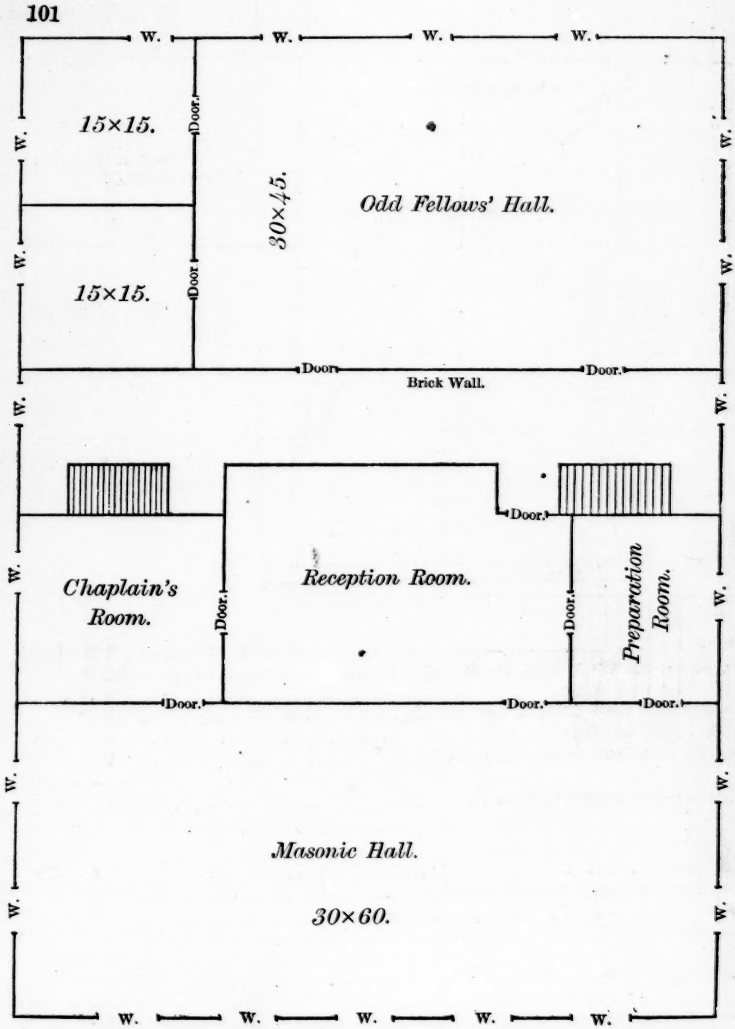
Front:

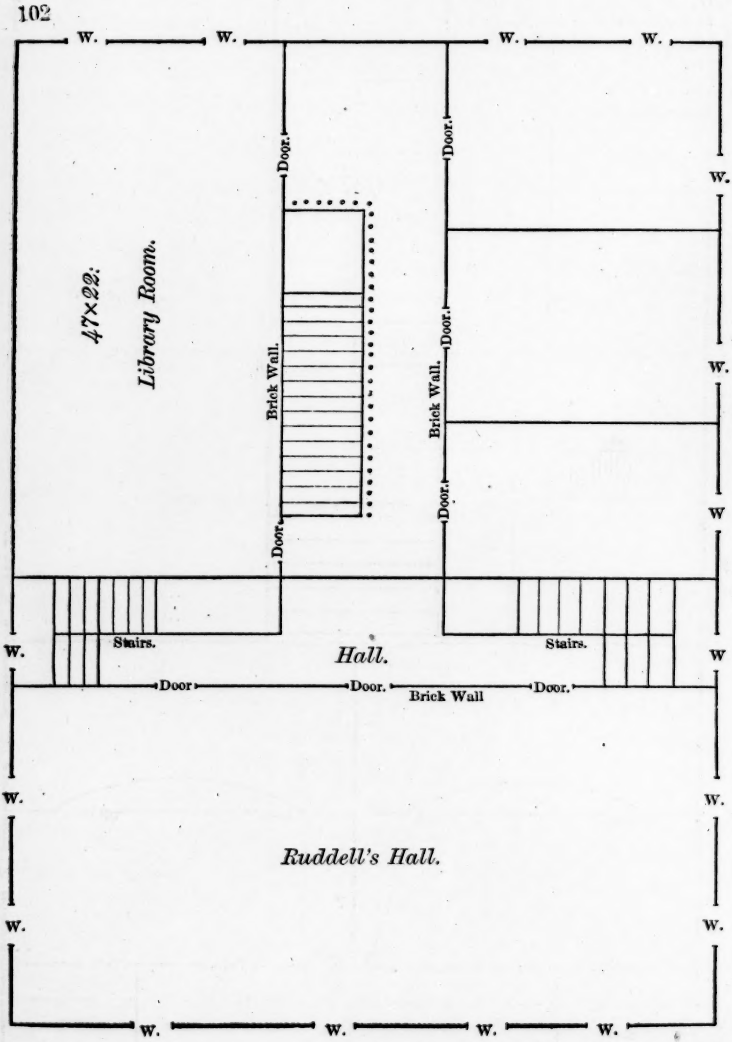
Sleepers	1 ft. 3 in.
1st story between floor & ceiling	12 "
Joice one foot wide	1 "
2 story between floor & ceiling	11 "
Joice one foot wide	1 "
3 story between floor & ceiling	16 "
Forty-two feet 3 inches	42 " 3

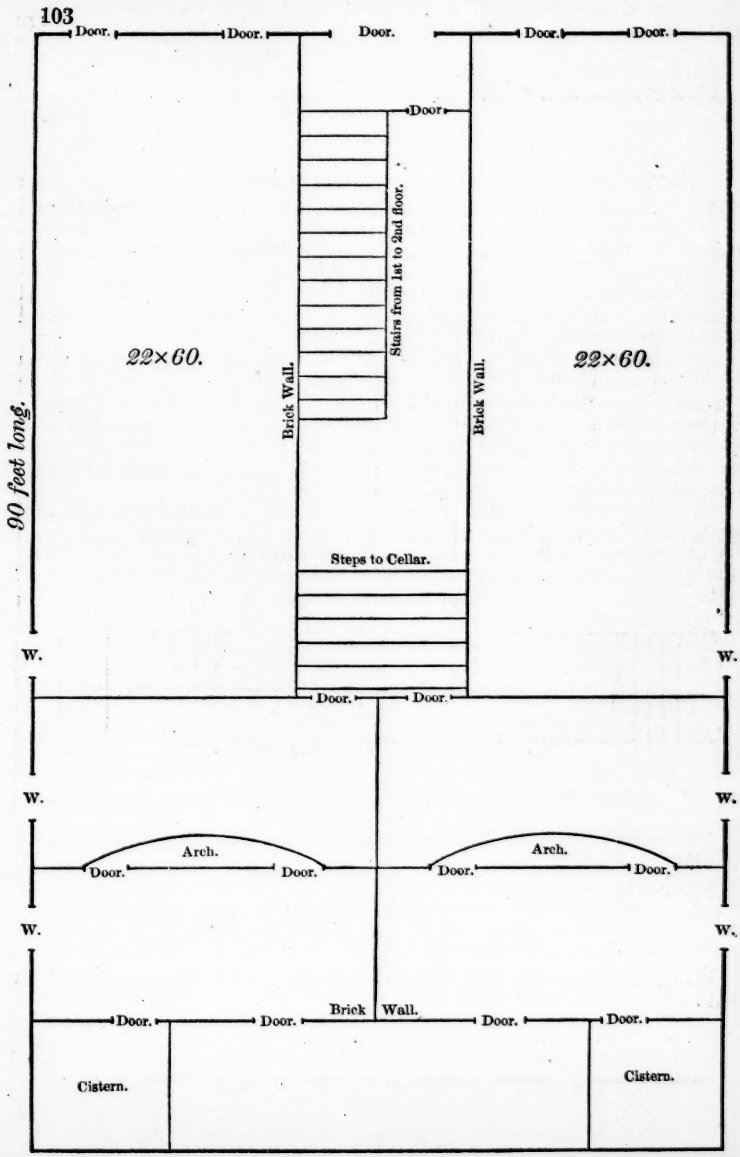
Back:

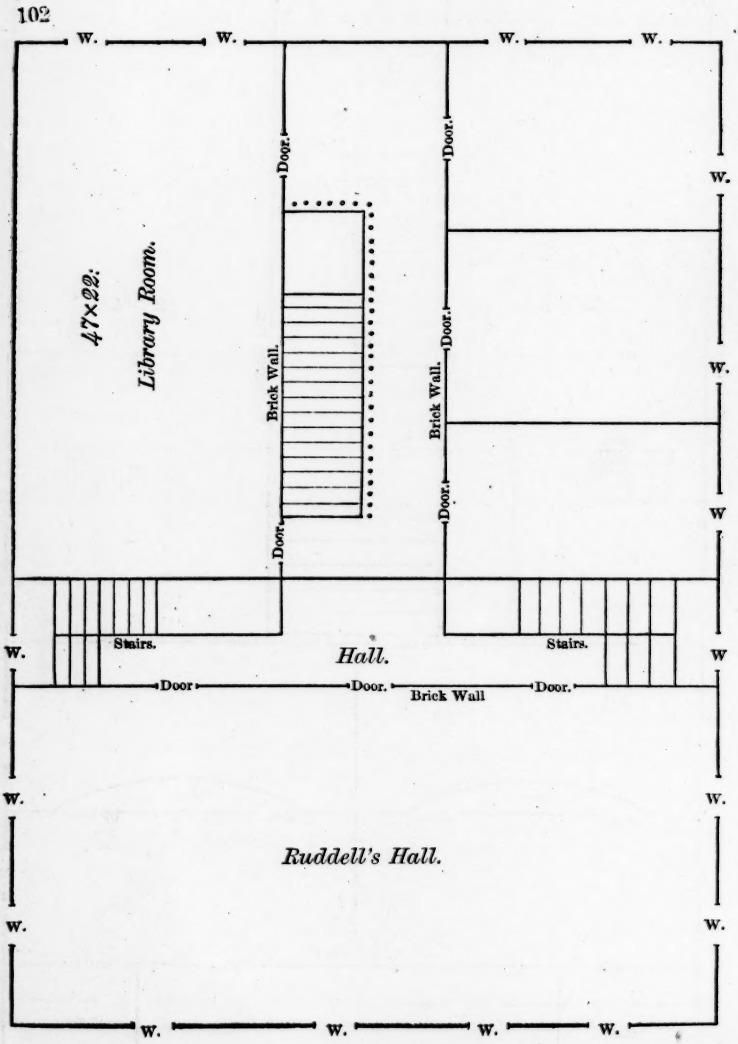
Sleepers	1 ft. 3 in.
1st story between floor & ceiling	10 "
Joice	1 "
2nd story " " "	15 "
Joice " " "	1 " 3
3rd story " " "	13 " 9
	42 " 3

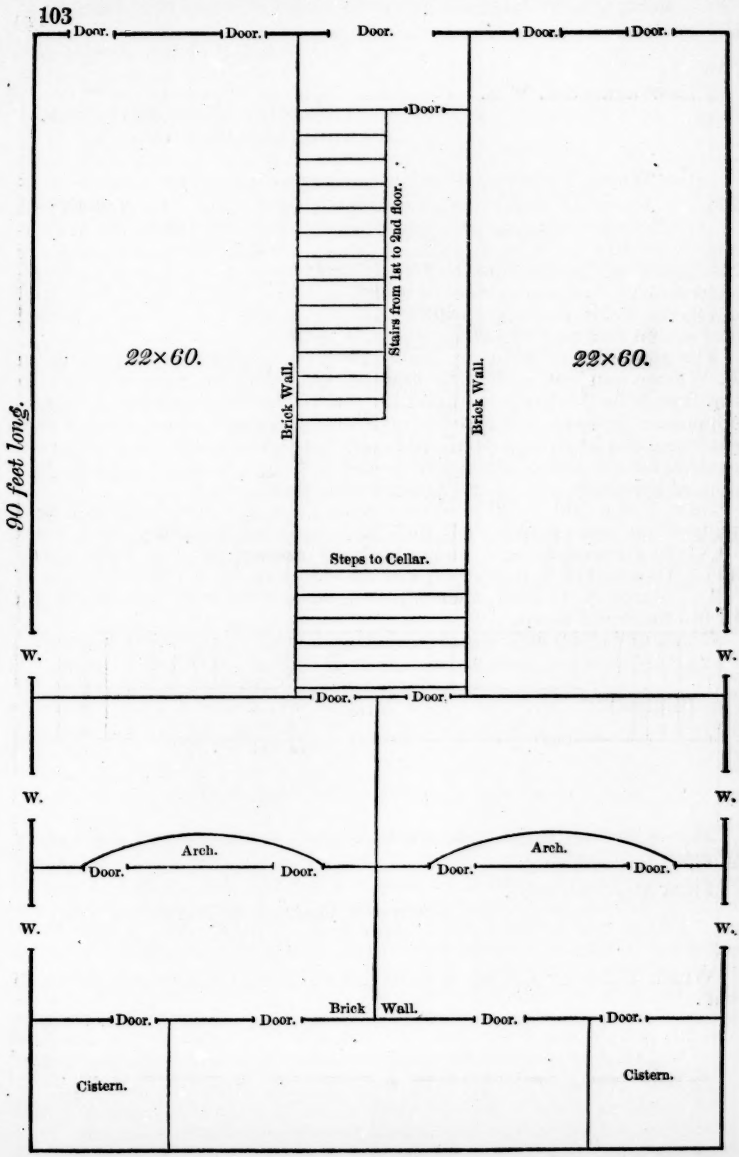
101


W.
Door.
15×15.
30×45.
Odd Fellows' Hall.
15×15.
Brick Wall.
Chaplain's Room.
Reception Room.
Preparation Room.
Masonic Hall.
30×60.


102
W.
W.
W.
W.
Door.
Door.
W.
47×22.
Library Room.
Brick Wall.
Brick Wall.
Door.
Door.
Door.
W.
W.
W
Stairs.
Hall.
Stairs.
W.
W
Door
Door.
Brick Wall
Door.
W.
W.
Ruddell's Hall.
W.
W.
W.
W.
W.
W.
W.


103
Door.
Door.
Door.
Door.
Door.
Door.
Stairs from 1st to 2nd floor.
22×60.
22×60.
90 feet long.
Brick Wall.
Brick Wall.
Steps to Cellar.
W.
W.
Door.
Door.
W.
W.
Arch.
Door.
Door.
Arch.
Door.
Door.
W.
W.
Brick Wall.
Door.
Door.
Door.
Door.
Cistern.
Cistern.


102
W.
W.
W.
W.
Door.
Door.
W.
47×22.
Library Room.
Brick Wall.
Door.
Brick Wall.
Door.
Door.
W.
W
Stairs.
Hall.
Stairs.
W.
W
Door
Door.
Brick Wall
Door.
W.
W.
Ruddell's Hall.
W.
W.
W.
W.
W.
W.
W.
W.


103
Door.
Door.
Door.
Door.
Door.
Door
Stairs from 1st to 2nd floor.
22×60.
22×60.
90 feet long.
Brick Wall.
Brick Wall.
Steps to Cellar.
W.
W.
Door.
Door.
W.
W.
Arch.
Door.
Door.
Arch.
Door.
Door.
W.
W.
Brick Wall.
Door.
Door.
Door.
Door.
Cistern.
Cistern.

104 The for'going drafts are those refer'ed to in the foregoing contract, and are intended merely as rough sketches of the design of the house.

WILLIAM BYERS, *President.*

Filed August 3rd, 1868.

CHA'S P. REDMOND, *Clerk,*
P'r R. S. GOODRICH, *D. C.*

Which Exhibit "B" is in words and figures as follows, to wit:

105 Know all men by these presents that we, John E. Womac, and Thomas Welch, as principals, and William W. Lewis, W. A. Bevens, J. W. Butler, John A. Price, & Henry Neil, as their securities, are held and firmly bound unto the Batesville Institute in the sum of ten thousand dollars, for the payment of which, well and truly to be made, bind ourselves, heirs, and legal representatives, jointly and severally, signed and sealed this 21st day of March A. D. 1859.

The above obligation is upon this condition: Whereas the said John E. Womac and Thomas Welch have entered into a written contract with the Batesville Institute to build for the Batesville Institute *to build a* a house in the town of Batesville according to a plan connected with said contract, and as described in said contract and the plan therewith connected, for the sum of sixteen thousand and eight hundred dollars, payable at the times and in the manner therein specified:

Now, if the said John E. Womac and Thomas Welch shall well and truly fulfill and comply with their said contract in writing, and build and complete said house in every respect, as they have bound

106 themselves to do by said written contract, by the fifteenth day of March A. D. 1861, then this obligation to be void, else to remain in full force and effect.

Given under our hands and seals this day and date above written.

(Signed)

JOHN E. WOMAC.	[SEAL.]
THOMAS WELCH.	[SEAL.]
W. W. LEWIS.	[SEAL.]
W. A. BEVENS.	[SEAL.]
J. W. BUTLER.	[SEAL.]
JOHN A. PRICE.	[SEAL.]
HENRY NEIL.	[SEAL.]

This is Exhibit B No. 2, referred to in and made a part of the answer of John E. Womac.

Filed Aug. 3rd, 1868.

CHA'S P. REDMOND, *Clk,*
P'r R. S. GOODRICH, *D. C.*

Which Exhibit "C" No. 3 is in the words and figures as follows, to wit.

107 Name of parties.	Date of judgement or decree.	Nature of judgement or decree.	Record.	Items & several amounts.	Total amount of judgement.	Satisfaction or otherwise.
John E. Womack & Thomas Welch vs. The Batesville Institute.	Statement, &c., for lien filed in my office this 15th day of Jan'y, 1861, at 15 minutes after 1 o'clock p. m.	Mechanics' lien as carpenters & builders, &c., of a brick building, situate on lot No. 8, in block No. 13 of the town of Batesville, Ark. Lien extends to house & lot; contract in writing made by Batesville Institute with said Womack & Welch.		Amount for whic' lien is claimed is fourteen thousand three hundred & twenty-six 67-100 dollars. The brick building to which this lien attaches is better known as the Batesville Institute, in said town of Batesville, Arkansas.	$14,326 67	

STATE OF ARKANSAS,
County of Independence:

I, Robert Neill, clerk of the circuit court in and for said county, do hereby certify that the foregoing is a true copy of an entry made in judgment-docket "C," page 6, of the records of said circuit court, as the same appear in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at my office in Batesville, on the 23d day of June, A. D. 1868.

[SEAL.] ROBERT NEILL, *Clerk.*
[Stamp.]

(Indorsed:) Abstract of the mechanics' lien. This is Exhibit C., No. 3, to the answer of John E. Womac. Filed Aug. 3d, 1868. Cha's P. Redmond, clerk, p'r R. L. Goodrich, D. C.

108 Which Exhibit D No. 4 is in the words & figures following, to wit:

John E. Womack & wife to William E. Gibbs. Deed.

This indenture, made and entered into this 19th day of December, A. D. 1859, by and between John E. Womack, A. L. Womack, his wife, of the first part, and William E. Gibbs, as trustee, &c., as hereinafter mentioned, of the second part, witnesseth, that for and in consideration of the sum of one dollar, in hand paid by the party of the second , to the parties of the first part, the receipt whereof is hereby acknowledged, and in further consideration of the premises hereinafter mentioned, & the parties of the first part, the said John E. Womack and wife, have, this day, and do, by these presents, grant, bargain, and sell unto the said William E. Gibbs, party of the second part hereto, the following-described real & personal property, and slaves, to wit:

109 The northeast quarter of section seventeen, (17,) township thirteen (13) north of range five (5) west, containing 160 acres; the west half of southeast quarter of section 8; the southeast quarter of southeast quarter of section No. (8) eight; the northwest quarter of northwest quarter of section sixteen (16;) the northeast quarter of southeast quarter of section No. eight; the southwest quarter of

southwest quarter of section No. (6) six; the east half of northwest quarter of section No. seventeen (17;) the northwest quarter of northwest quarter of section No. seventeen, (17,) all in township (13) thirteen north of range No. five west, and lying and being in county of Indep'ndance, and State of Arkansas, and containing, in the ag'regate, five hundred and twenty acres, more or less.

We, also, for the consideration of five dollars afor'said, and the further consideration mentioned, do sell and convey to the said William E. Gibbs, party of the second part, one negro woman or girl, about eighteen years old, of dark color, and slave for life, named Mary, together with *what* whatever increase said negro woman may have.

We also sell and convey to said Gibbs one horse; three yoke of work-cattle; two cows and calves; three tables; seven beds, and the bedding belonging thereto; twelve chairs; one cooking-stove, and fixtures, &c., belonging thereto; the whole of our table-furniture; one wagon; the farming-utentials, in possession of the said John E. Womack; one distillery, and the fixtures thereto belonging, being all in the possession of the said parties of the first part hereto.

To have and to hold the afor'said lands and tenements, slave, and personal property, furniture, &c., above mentioned, to him, said William E. Gibbs, in trust, however, to do and perform the following things and trusts; that is to say, that whereas Aaron Hirsh & Israel H. Adler, partners, by the style of Hirsch & Adler, have advansed to the said John E. Womack & Thomas Welch large sums of money to enable them to comply with their contract to build the Batesville Institute, have agreeed to furnish other means to enable the said Womack & Welch to carry on the work on said building, and for other purposes, which sum, so advansed by the said Hirsch & Adler, to the 10th of December, A. D. 1859, amounts to the sum of four thousand dollars, which indebtedness is evidenced by a note of date the 10th day of December, 1859, for the afor'said sum due two years after date, with interest at the rate of ten per cent. from date till paid; now, this deed is made by the parties of the first part here, for the express purpose of securing the said Aaron Hirsch and Israel H. Adler in the payment of the amount of four thousand dollars so advanced by them to the said Womack & Welch, as afor'said, as well as to secure them in the payment of & for goods, wares, &c., that they, the said Womack & Welch, may buy, and, to secure them, the said Hirsch & Adler, in the payment of any and all sums that they, the said Hirsch & Adler, may advance to the said Womack and Welch, or pay out, or assume for them, for the purpose afor'said, or that they may, in future, advance to the said John E. Womack individually. And if they, the said John E. Womack and Thomas Welch, shall pay or cause to be paid to the said Hirsch & Adler the said note for four thousand dollars, and the interest thereon, according to the tenor and effect thereof, and shall also pay to them such other and further sums of money for such amounts of goods, and wares, &c., as they, the said Hirsh & Adler, shall or may advance to, sell to, or assume for the said Welch & Womack in the future, that is to say, for the next two years from this date, and if the said John E. Womack shall also pay to the said Hirsch & Adler all sums that he may owe to them in his individual capacity, in the next two years from this date, and also the expense of this deed of trust, then this deed to be void, and the said William E. Gibbs is to reconvey to the said John E. Womack all the lands, and slaves, & personal property herein mentioned. But if the said Womack & Welch shall not pay

to the said Hirsch & Adler the said note of four thousand dollars,
113 according to the tenor and effect thereof, and the further sum of money that the said Hirsch & Adler may advance to them in the next two years, or assume to pay; or pay for them, the said Womack & Welch, or if the said John E. Womack shall fail to pay the amount that, in two years from this date, may be due from him individually to the said Hirsch & Adler, and the expenses of this trust & deed, and also to account for goods, wares, & merchandise sold, &c., then, after the expiration of two years from this date, the said William E. Gibbs is empowered to take the real and personal property, & slave, hereinbefore mentioned, into his possession, & to sell the same for cash or on a credit to the highest bidder, at the court-house door of Independance County, or elsewhere where he may deem it most advantageous for all parties concerned, first giving the notice required by law for sales of property under execution at law.

And said Gibbs is to pay and apply the proceeds of the sale of
114 said property, first, to the payment of the expense of this trust; second, to the payment of the said note of four thousand dollars, and the interest due thereon; third, to the payment of whatever sums of money, and for goods sold, &c., that said Hirsch & Adler may, in the next two years, advance to the said Womack & Welch, or pay for them, or assume to pay for them, or to sell to them, and to the payment of whatever may be due from this said John E. Womack to said Hirsch & Adler individually.

And fifth, said Gibbs shall pay the remainder of said proceeds, if any, to the said John E. Womack or to those who may be entitled.

I is expressly agreeed and understood between parties hereto that the said John E. Womack shall retain and hold the possession of the real and personal property and slave in this deed mentioned, and he is to enjoy the rents and profits, labor, and use thereof, without let or hinderance in the cases hereinafter mentioned.

But if at any time, in the opinion of the said William E. Gibbs,
115 the property in this deed mentioned is liable to be wasted or otherwise rendered insecure, so that the objects of the trust may be defeated, then he, the said Gibbs, is empowered to take or sue for and hold the same in his possession, and he is in all things given the power over said property that may be proper or necessary to carry out the trusts herein created, and this although the two years herein given may not be expired.

The object being to let the said Womack hold the property herein mentioned for the term of two years from this date, or until called for under the provisions of said deed, for the purpose of taking care of the same, but if at any time within the two years, or afterwards, the same shall be insecure in his hands, or is likely to be lost, injured, or destroyed, then the said Gibbs is at liberty & is expressly directed to exercise the power herein given, and take the said property and
116 every article thereof into his possession, and hold the same subject to the trusts herein declaired.

In testimony whereof we have hereunto set our hands & seals this the 19th day of December, A. D. 1859.

JOHN E. WOMACK. [SEAL.]
A. L. WOMACK. [SEAL.]

I accept this deed and the trusts therein created, &c., this the 19th day of December, A. D. 1859.

W. E. GIBBS. SEAL.]

STATE OF ARKANSAS,
County of Independance, sct.:

Be it remembered that on this day before me, Jessie Searcy, an acting and daily commissioned justice of the peace in said county of Independance, personally came and appeared John E. Womack, the grantor in the foregoing deed, and who is well known to me to be the person therein represented, and then and there declared that he had made and executed the foregoing deed to William E. Gibbs for the consid-
117 eration and purposes therein mentioned and set forth.

And on the same day before me voluntarily came Nancy L. Womack, the wife of the said John E. Womack, who is well known to me, and then and there, in the absence of her said husband, declared that she had of her own free will and accord executed the above deed to William E. Gibbs, and had signed and sealed the same as a relinquishment of her dower and support for the purposes and consideration therein mentioned and set forth & contained, without compultion or under influence of her said husband; and on the same day, also before me, William E. Gibbs, the grantee in the above deed, then and there acknowledged that he had executed the above acceptance of trust, &c.

In testimony whereof I have hereunto set my hand, &c., this 20th day of December A. D. 1859.

JESSE SEARCEY, *J. P.*

The foregoing instrument of writing was filed for record on the
118 21st day of December, A. D. 1859.

JOHN A. PRICE, *Clerk.*

A true copy from Book "N," pages 446 to 450 inclusive, of the record of deeds and mortgages in my office.

In testimony whereof I, Robert Neil, clerk of the circuit court in and for the county of Independance, in the State of Arkansas, and ex-officio recorder therefor, hereto set my hand and affix the seal of my office this 23rd of June, A. D. 1868.

[L. S.]

ROBERT NEILL,
Clerk & ex-officio Recorder.

[Rev. stamp 5-cts.]

This is Exhibit "D" No. 4 refer'ed to in and made a part of the answer of John E. Womack.

Filed August 3rd, 1868.

CHARLES P. REDMOND, *Clerk,*
P'r R. S. GOODRICH, *D. C.*

Which Exhibit E No. 5 is in the words and figures as follows, to wit:

119 Thomas Welch & wife to W. E. Gibbs. Deed.

This indenture, made and entered into this 19th day of December, A. D. 1859, by and between Thomas Welch & Sarah, his wife, of the one part, & William E. Gibbs of the other part, witnesseth, for and in consideration of the sum of one dollar in hand paid by the party of the second part, to the party of the first part, the receipt whereof is here acknowledged, the party of the first part, the said Thomas Welch & wife, have this day, and by these presents, grant, bargain, and sell unto the said William E. Gibbs, for the consideration aforesaid & the further

consideration hereinafter mentioned, the following tract or parcel of land laying and being the town of Batesville, and more particularly described as follows, to wit:

That part of section sixteen, township thirteen north, of range six west, and known as Batesville addition to the town of Batesville, beginning at a rock for corner on Harrison street, at the termination of a division-line between Allen D. Ramsey and Robert Bates; thence south five degrees west on said division-line three hundred and one and half feet; thence west eight hundred & thirteen feet; thence north
120 three hundred feet; thence east on Harrison street eight hundred and fifty feet to the place of beginning, containing five seventy-five one-hundre'th acres, together with the appurtenances thereunto belonging, the said lot being since conveyed to said Thomas Welch by Rob't Bates, sen., and Robert Bates, jun., by deed dated 30th of March, 1859. The said Thomas Welch also sells and conveys to the said William E. Gibbs two mules of dark bay color, 5 or 6 years old, and now in his possession, one wagon and harness, one negro-woman, slave for life, named Peggie, about forty years old; two cows and four calves, and one old ox-waggon; to have and to hold the aforesaid lands and tenements, slaves & personal property to him, said Gibbs, in trust to do and perform the following things and trusts, that is to say: That whereas Aaron Hirsch and Israel H. Adler have advanced to the said Thomas Welch and John E. Womack the sum of four thousand dollars, to enable them to carry on their contract of building the Batesville Institute, which indebtedness is evidenced by a note of the said Womack & Welch for the said sum of four thousand dollars, being dated the 10th day
121 of December, A. D. 1859, due two years after date, with interest at the rate of ten per cent. from date till paid; and whereas the said Hirsch & Adler have promised to furnish other sums of money to enable the said Womack and Welch to complete their said building, &c.: Now this deed is made for the express purpose of securing the said Hirsch and Adler, who are partners by the above name and style, in the payment of the aforesaid note four four thousand dollars according to the tenor and effect thereof, as well as to secure them in the payment of any and all sums of money that the said Hirsch & Adler may hereafter, in the period of two years from this date, advance to the said Womack & Welch for the purpose aforesaid, or that they pay for them or become liable to pay for them. And if the said Womack & Welch shall pay or cause to be paid the said note of four thousand dollars, according to the tenor and effect thereof, and shall also pay the other sums of money that they, the said Hirsch and Adler, may advance to pay for or become liable to pay for said Womack & Welch, in the next two years from the date of this deed, and also the expenses of this deed of trust, then this deed to be of none effect, and the said Gibbs
122 is to reconvey to the said Thomas Welch the land, personal property, & slaves herein mentioned.

But if, at the expiration of two years from the date hereof, any of the before-named sums of money are not paid, then the said Gibbs is hereby empowered and directed to take possession of the above-described real personal and real property & slave, if the whole be necessary for that purpose, and after giving notice as for sales under executions at law, he is to sell the same at the court-house door to the highest bidder for cash, or on a credit, as he may deem best for the interest of all concerned, and the proceeds of said sale are to be first applied to the payment of the expenses of this trust; 2nd, to the payment of the aforesaid note of four thousand dollars and the interest, and to the

and to the payment of the other sums of money that may be advanced and be paid for the said Womack & Welch by the said Hirsch & Adler, or that they may be then owing them of the remainder, if any is to be paid to the said Thomas Welch or to those
123 entitled, &c. It is expressly agreed and understood that the said Thomas Welch is to have & to hold the lands & slave & personal property in this deed mentioned for the term of two years, or until called for under the provisions of this deed, and he is to take the rents, use, issues and profits thereof, free from any let or hindrance by the same Gibbs, unless called for under the provisions of this deed, but if at any time there should be reason to believe that said property would be wasted, injured, or lost, then the said Gibbs is hereby empowered and directed to take the same in his possession, and hold the same subject to the provisions of this trust.

The object being to protect the said Thomas Welch, to hold the whole of property herein mentioned, & to use the same & safely keep the same, if in the opinion of the said Gibbs it could be done.

But if the property cannot be safely kept by said Welch in the opinion of said Gibbs, then he is empowered and directed at any time to assert his right thereto under this deed, and to take the same into
124 his possession, even though the two years herein mentioned has not expired.

In testimony whereof we have hereunto set our hands and seals, this the day and date above written.

THOMAS WELCH. [SEAL.]
SARAH WELCH. [SEAL.]

STATE OF ARKANSAS,
County of Independence:

I, William E. Gibbs, accept the foregoing deed, and the trusts, &c., thereby created, this 17th day of December, A. D. 1859.

W. E. GIBBS. [SEAL.]

STATE OF ARKANSAS,
County of Independence:

Be it remembered that on this day personally before me came and appeared Thomas Welch, the grantor in the above deed to William E. Gibbs, and who is well known to me, and then and there acknowledged that he had made and executed the foregoing deed for the consid-
125 eration and purpose therein mentioned and set and contained.

And on this day also before me voluntarily came Sarah Welch, wife of said Thomas Welch, and then and there, in the absence of her said husband, declared that she had executed the foregoing deed to William E. Gibbs, of her own free will and accord, and had signed and sealed the same as a relinquishment of dower, for the purpose therein contained and set forth, without compulsion, or undue influence of her said husband.

On the same day and before me, came William E. Gibbs, the grantee in said deed, and then and there acknowledged that he had signed and executed the acceptance of this deed & of the trust therein created.

In testimony whereof, I, Jesse Searcy, *&* acting justice of the peace in and for Independence County, *&* have hereunto set my hand and affixed, &c., this the 20th day of December, A. D. 1859.

JESSE SEARCY, *J. P.*

126 The foregoing instrument of writing was filed for record on the 21st of December, A. D. 1859.

JOHN A. PRICE, *Clerk.*

A true copy from Record Book "N," pages 443, 444, 445, & 446, of the records of deeds and mortgages. In testimony whereof I, Robert Neill, clerk of the circuit court and ex-officio recorder in and for the county of Independence, in the State of Arkansas, hereunto set my hand and affix the seal of my office, this 23d day of June, A. D. 1868.

[SEAL.] ROBERT NEILL,
Clerk and ex-officio Recorder.

[Stamp.]

(Indorsed:) Deed of trust from Welch & wife to W'm E. Gibbs. This is Exhibit "E No. 5" to the answer of John E. Womac. Filed Aug. 3d, 1868. Cha's P. Redmond, cl'k, p'r R. L. Goodrich, D. C.

127 And on October 12th, 1868, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

And now this day come the said complainants, by Watkins and Rose, their solicitors, and file herein their replication to the answer of defendant, John E. Womack.

Which replication is in the words and figures following, to wit:

In the United States circuit court for the eastern district of Arkansas
In chancery.

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

The replication of the said plaintiff to the answer of John E. Womack, herein.

The said plaintiff' saving and reserving, &c., for replication to the said answer, say that they will aver, maintain, and prove their said bill
128 to be true, certain, and sufficient to be answered unto by the said defendant, and that the said answer is uncertain, evasive, and insufficient in the law, to be replied unto by these repliants. All which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

M. KAUFMAN & CO.

WATKINS & ROSE,
Solicitors.

Filed October 12th, 1868.

CHA'S P. REDMOND, *Clerk.*

And on October 28th, 1868, as follows:

M. KAUFMAN & CO., COMPLAINANTS,
vs.
BATESVILLE INSTITUTE, ET AL., RESPONDENTS.

And come said complainants, by Watkins & Rose, their solicitors and come the defendants, by Garland and Nash, their solicitors, and by

consent of parties, by their said solicitors, it is ordered that the order granting an appeal in cause, made on the first day of May,
129 A. D. 1868, be, and the same is hereby, set aside, annulled, and held for nought. And by like consent it is ordered that this cause be set down for hearing at the next term of this court, and that both parties have leave to take the depositions of witnesses generally.

And on February 5th, 1869, before the clerk, in vacation, as follows, to wit:

M. KAUFMAN & CO.
vs.
THE BATESVILLE INSTITUTE ET AL.

And now, this day, come into the clerk's office said complainants, by Watkins and Rose, their solicitors, and on their motion it is ordered that said complainants have leave to take the depositions of witnesses generally, before any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, to be read in evidence on the trial of this cause.

Attest: CHA'S P. RE'MOND, *Clerk.*

130 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that, at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the day of April, anno Domini one thousand eight hundred and sixty-nine, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on May 7th, 1869, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

And now come the complainants, by Watkins and Rose, their solicitors, and come the defendants, by Garland and Nash, their solicitors, and on motion this cause is continued, with leave to both parties to take depositions, and this cause is set down for hearing at the next term of this court.

And on June 1st, 1869, before the clerk, in vacation, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

131 Come the parties, by their respective solicitors, and file herein their agreement, in words and figures following, to wit:

United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE, DEFENDANT.

We consent that the clerk may publish and file all depositions in file in this case.

WATKINS & ROSE, *for Pl'ffs.*
GARLAND & NASH, *for Def't.*

In pursuance of above agreement it is ordered that the clerk open and publish all depositions on file in this case.

Attest: CHA'S P. REDMOND, *Clerk.*

Which agreement is in the words and figures following, to wit:

132 United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs
BATESVILLE INSTITUTE, DEFENDANT.

We consent that the clerk may publish and file all depositions on file in this case.

WATKINS AND ROSE,
For Plaintiff'.
GARLAND AND NASH,
For Defendant.

Filed June 1st, 1869.

CHA'S P. REDMOND, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the day of April, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the honorable Samuel F. Miller, judge
133 of the Supreme Court of the United States, assigned to this circuit, presiding and holding said court, the following proceedings were had, to wit:

And on May 17th, 1870, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

And now come said complainants, by Watkins and Rose, their solicitors, and comes the said defendant, by Garland and Nash, *their* solicitors, and this cause is submitted to the court, upon the pleadings, proofs, and briefs of counsel, without argument.

And on May 20th, 1870, as follows:

MAX KAUFMAN, LOUIS KAUFMAN, CALAMON Hirsch, parties, as M. Kaufman & Co., pl'ffs,
vs.
BATESVILLE INSTITUTE, THOMAS COX, JOHN E. Womack, John and Sarah Campbell, Thomas Welch, & William Welch, def'ts.

134 This day came the plaintiffs, by Watkins and Rose, their solicitors, and came the defendants, the Batesville Institute, and Thomas Cox, by their solicitors, Garland and Nash, and the court being now sufficiently advised what decree to render herein, doth find that the jud'ment heretofore rendered in the circuit court of Independence County, on the thirty-first day of March, 1861, in favor of John E. Wo-

mack and Thomas Welch, against the Batesville Institute, for the sum of twelve thousand six hundred and sixteen dollars and fifty-seven cents, constitutes in equity a lien on lot No. eight, (8,) block No. 13, in the town of Batesville, Arkansas, in the hands of the plaintiffs, as assignees of said judgment. It is therefore ordered, considered, and decreed, that the plaintiffs have a lien on the said property for the said sum of twelve thousand six hundred and sixteen dollars and fifty-seven cents, with interest on the same at the rate of six per centum per annum from the thirty-first day of March, 1861, until paid; which sum, however,
135 is subject to a deduction for rents from the said property, by Hirsch and Adler, previous to their assignment of the judgment-lien to the plaintiffs; and the question as to whether rents should be charged to the plaintiffs after the said assignment is reserved for further orders herein. And because the value of said rents cannot now be ascertained by the court, this cause is referred to Charles P. Redmond, as master in chancery of this court, to take further testimony on that point, and to state an account of the balance due on said judgment after deducting the rents aforesaid, and to report the same to this court at the next term thereof. And said master will report the amount of rents chargeable to Hirsch and Adler, both before and after said assignment to plaintiffs, in separate accounts.

And on June 18th, A. D. 1871, before the clerk, in vacation, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

136 And now, this day, come into the clerk's office said complainants, by Watkins and Rose, their solicitors, and, on their motion, it is ordered that said complainants have leave to take the depositions of witnesses generally before any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, to be read in evidence on the trial of this cause.

And on September 20th, 1870, before the clerk, in vacation, as follows, to wit:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

And now come the solicitors in this cause into the clerk's office and file their written agreement for publication of depositions, in words and figures following, to wit:

UNITED STATES, *Eastern District of Arkansas:*

137 M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

We, the undersigned, agree that the clerk may open, publish, and file any depositions now on file, or hereafter to be filed.
Sept. 20th, 1870.

WATKINS AND ROSE,
For Plaintiffs.
GARLAND AND NASH,
For Defendants.

Whereupon it is ordered that said depositions be opened and published, as above consented.

Which agreement is as follows:

United States circuit court, eastern dist. of Arkansas.

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

We, the undersigned, agree that the clerk may open, publish, & file any depositions now on file or hereafter to be filed.

WATKINS & ROSE, *for Pl'ff'.*
GARLAND & NASH, *for Def't.*

Filed Sept. 20th, 1870.

CHA'S P. REDMOND, *Clerk.*

138 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that, at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 10 day of October, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on November 5th, 1870, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

And now come the complainants, by Watkins and Rose, their solicitors, and, on their motion, it is ordered that the depositions on file in this cause be opened and published by the clerk.

And on January 2nd, 1871, before the clerk at rules, as follows, to wit:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

139 And now comes into the clerk's office Charles P. Redmond, esq., the master appointed by this court to report the rents and profits in this cause, and files herein his report of rents and profits as required by the decree of this court made on the twentieth day of May, A. D. 1870, and also files the depositions of witnesses taken before him.

Which report is in the words and figures following, to wit:

140 U. S. circuit court east. dist. Arkansas.

M. KAUFFMAN & CO.
vs.
BATESVILLE INSTITUTE ET AL.

Master's report.

PART FIRST.

The master to whom this case was referred would report that he has carefully and laboriously examined the depositions of some forty wit-

nesses submitted to him by counsel for the respective parties, and briefs of evidence prepared by the respective solicitors, and also the depositions used on the trial of the issues in this cause.

That he conceives the rule governing him in taking this account to be that applicable to "mortgagees in possession," as stated in 1 Lomax' Digest, M. P., 332, that complainants and their assignors are not obliged to account according to the value of the lands—not bound by proof that the lands were worth so much, unless it be proved that they made so much of them, or might have done so but for their wilful default,
141 as if they had turned out or refused tenants; that they are only bound for what they actually received, not bound to take the trouble to make the most of another's property.

The master has had great difficulty, and been in much doubt, in coming to the conclusions hereinafter stated, owing to the fact that the testimony does not distinguish between the periods prior and subsequent to May 29th, 1865, the date of the assignment to complainants, for which the master is directed to make separate statements of the rents; nor does the testimony show with any degree of accuracy the periods during which the property in question was actually occupied, or what rents were paid for it, except in occasional instances, very few of the witnesses giving dates at all, and where they do, *it is* such dates as before, after, or during the war or in such a year.

The evidence shows that Hirsch & Adler, complainants' assignors, went into possession January 1st, 1861, and continued in possession of one or both of the store-rooms in the building from that date until May 15th, 1864, when A. Hirsch, the surv'ing partner, left Batesville.

It is in evidence that the building was at various times,
142 by one or other of the contending armies during the late war, and was much wasted by both of them, but does not show how long or at what dates it was so occupied, except in case of Col. Livingston's command.

There is no evidence to show that Hirsch & Adler ever rented any part of the building, or received any rents from it, prior to May 29th, 1865. It is not shown whether the building was occupied or vacant from May 15th, 1864, to May 29th, 1865; but the impression on the mind of the master is that it was vacant, as several witnesses testify that it was vacant a part of the time. Defendant's brief admits a vacancy for a year, and this period is the only time, prior to May 29th, 1865, that some occupancy is not shown. The master has therefore considered it as vacant for this period.

A. Hirsch, one of complainants' assignors, testifies that the lower rooms, one or both of them, were occupied by him from 1861 to 1864; and it is shown that he left Batesville with Col. Livingston, May 15th, 1864; and Hirsch further says that the rent of the part of the building occupied by them was worth $600.00 per annum for the years 1861, '62, '63, & '64. As no part of the building is shown to have been oc-
143 cupied during this time except by them and the U. S. army, who are testified to have paid no rent, the master, under the rule, has only charged them with rent for this period of occupancy, from January 1st, 1861, to May 15th, 1864, being three years four and one-half months. As to the value of rent during this period, the testimony is very conflicting and uncertain. Some witnesses say the rent was worth nothing, and that parties were glad to have property occupied without rent, for purposes of protection. Others state that the rent was very valuable. Some show it more valuable than at present.

But, from the general gravamen of the testimony, from the disturbed

condition of the country, suspension of business, and bad repair of the building, the master is forced to the conclusion that the rental value must have been very low indeed. A. Hirsch testifies that the rental value of the part occupied by them was $600.00 per annum for said period.

The master is of opinion, from the evidence, that both parties assented that the Masonic hall should be occupied free of rent, and it is therefore left out of this computation.

Under all the circumstances developed in the testimony, the
144 master is well satisfied that the $600.00 per annum testified to by Hirsch is very liberal, if not a very high rent for the part occupied by them for that period, and has taken that estimate as its value, and has charged complainants with rent at $600.00 per annum for three years four and one-half months, being $2,225.00; and has charged them with no other rent, as none is shown to have been received by them; and there is nothing to show, or tending to show, any bad faith or wilful default or negligence on their part in renting the property, nor any motive for them to reject tenants or refuse rent.

The master has allowed Hirshe & Adler for $75.75, shown by the testimony of Simon Adler to have been paid out by them for repairs; items and copy of account given. There is a vague statement of A. Hirsch, in his deposition, of having paid out $400.00, or $500.00, for repairs during this period, but it is not of that specific character which would justify an allowance based upon it in an investigation of this character.

There is some testimony that complainants' assignors were to pay rent and keep the building in repair, and some that they were not
145 to pay rent, and to occupy the property merely for the purposes of protection; but as this testimony was before the court previous to decree, the master has not attempted to settle the question or make allowances based thereon.

The master is of opinion that there has been no voluntary waste by complainants' assignors during this period. How far, under all the circumstances, there has been permissive waste, if at all, the testimony does not develope facts sufficient to guide him in determining; and he understands by the decree that the question of permissive waste is not within the terms of this reference; the evidence before the court on the trial of the issue in this case tending to show the nature and cause of the delapidation of the building, and the decree being silent on this subject.

Upon the foregoing considerations the master finds and reports that on the second day of January, 1871, the date of this report, there is due to complainants, on the judgement against the defendants, principal, $12,616.57; interest, (9 years and 9 months,) $7,380.68; and for amount expended by them for repairs, $75.75; making a total of $20,073.00; from which defendants are entitled to a deduction or credit of
146 $2,225.00 for occupation or rent of building by complainants' assignors, leaving a balance due to complainants of $17,848.00.

PART SECOND.

The decree in this case directs the master to report the rents chargeable to Hirsch & Adler, (& he presumes to complainants,) both before and after the assignment to complainants in separate accounts.

In stating the account since the assignment, May 29th, 1865, the

master deems that the same rule applies as that which he has stated governed him in computing the rents prior to the assignment; that is, that complainants are only chargeable with rents actually received.

The evidence does not show, or tend to show, whether or not the building was occupied from May 29, 1865, to September 1, 1865, the date Rushing states he rented one store for $40.00 per month. During this period it does not appear that there was any person in Batesville to represent complainants or receive rent for them, nor that any part of the building was occupied, unless by U. S. officers, who paid no rent; nor that complainants received any rent at all, and the master
147 has therefore not charged them with any rent for this period.

From this date, September 1st, 1865, the account of M. Kauffman & Co., made a part of the deposition of Simon Adler, gives a detailed account of all their receipts and expenditures from and upon said property up to August 1st, 1870, which account corresponds so exactly with the testimony of the various witnesses who have been examined in relation to the occupancy and repairs, that the master is satisfied it is accurate and correct. There is no discrepancy, as far as the master can as'ertain, between it and the testimony of the many witnesses who have been examined as to the matters therein set forth.

The master has therefore taken this account as a basis of complainants' receipts and expenditures for the time it covers, Sept. 1, '65, to August 1, '70, showing receipts of $3,695.38, and expenditures of $2,518.40.

There are one or two items in said account which the master does not deem correct, as follows: For four months in 1865 a store was rented for $30.00 per month, making $120.00; and the tenant put on repairs to the amount of $42.65, leaving a balance of $77.35.
148 Kauffman & Co., under this state of facts, are charged with only $77.35 for rent, and credited with $42.65 for repairs; they should have been charged with $120.00, whole amount of rent.

The master is of opinion that the rents charged to complainants in this account for the store occupied by Simon Adler, their agent, $25.00 per month, (who stands in the same position as if complainants were themselves occupying the building,) is inadequate, as shown both by the general testimony and by the other items of the same account, showing that, for the first three out of the four years for which rent is charged, the adjoining room, when rented at all, rented for $40.00 per month.

Complainants must, therefore, be charged with $40.00 instead of $25.00, per month, for rent of said store for three years, and $25.00 per month for one year, these being shown by the evidence to be the fair values of the rent for that period.

Complainants must, therefore, be charged with $1,740.00 for rent of Simon Adler, instead of $1,200, as charged in their account.

The master has also disallowed the item in said account of $152.50, "rent in process of collection," which is credited to
149 Kauffman & Co., for reasons that are too obvious to need statement.

The other credits to Kauffman & Co., in said account, the master deems legitimate and legal charges for repairs, and has allowed them. The credit side of said account will then be $2,518.40, less $152,50; equal $2,365.90. And the debit side of said account will be $3,695.38, with $42.65 erroneously deducted from rent, and $540.00 additional valuation of Simon Adler's rent added; equal $4,278.03; leaving a balance of rents over expenditures, for repairs, $1,912.13 up to August 1st, 1870.

To the above amounts, charged to complainants, must be added the rents from date of said account, August 1, 1870, to January 2, 1871, date of this report, being five months. It appears that both stores are rented at $25.00 each per month, which for five months equals $250.00. It also appears that three of the offices up-stairs are rented at $6.00 per month each; making $18.00 per month for five months; equal $90.00; total rent for this five months, $340.00. The other rooms do not appear to be occupied, except the Masonic and Odd-Fellows' hall, and
150 Episcopal church, which the master has left out of the account, deeming that there is sufficient evidence to show the mutual consent of parties that they should be occupied free from rent.

There is evidence tending to show permissive waste on the part of complainants during this latter period; but, for reasons before stated, the master has not taken any cognisance of same in this report.

The master would state that, whether or not the results he has arrived at satisfy the equitable demands of the case, he is of the opinion that under the rule governing him, and the facts as they are shown in the testimony, no other report could be made.

The results of this investigation are set forth in the tabulated statement annexed, and the depositions upon which the report is based are hereto annexed.

All of which is respectfully submitted by

CHA'S P. REDMOND,
Master.

151 *Tabulated statement of account.*

FIRST PERIOD.

Statement of balance due on judgment.

Amount of judgement, M'ch 31, '61	$12,616 57	
Interest, 9 years 9 mo's, to Jan. 2, '71	7,380 68	
Total, principal & interest of judgement		$19,997 25
Rents, January 1, '61, to May 15, '64	$2,225 00	
Rents, May 15, '64, to May 29, '65	0,000 00	
	$2,225 00	
Less repairs expended	75 75	
Net rent Jan'y 1, '61, to May 29, '65		$2,149 25
Balance due on judgement Jan'y 2, '71		$17,848 00

SECOND PERIOD.

Statement of rents since assignment.

Rent May 29, '65, to Sept. 1, '65	$0,000 00	
Rent Sept. 1, '65, to Aug. 1, '70	4,278 03	
Rent Aug. 1, '70, to January 2, '71	340 00	
Total rent May 29, '65, to January 2, 1871		$4,618 03
Expenditures for repairs		2,365 90
Net rents since assignment		$2,252 13

Filed Jan'y 2d, 1871.

FRANK E. WRIGHT, *Clerk.*

152 Which deposition of Sol. Adler's in the words and figures as follows, to wit:

153 M. KAUFMAN & Co.
vs.
BATESVILLE INSTITUTE.

Deposition of Sol. Adler taken before me this the 30th day of September, A. D. 1870, by consent of parties, who were present at said examination by counsel, Watkins & Ross for complainants, Garland & Nash for defendants, as p'r agreement at end of this deposition.

SOL. ADLER being duly deposed and sworn, says:

My name is Sol. Adler, of lawful age; reside at Jacksonport. My occupation is that of a merchant. I am acquainted with M. Kaufman & Co. I am acquainted with Aaron Hirsch. They live at New Orleans, Louisiana. I know Israel H. Adler in his life-time. He died in New Orleans, where he then resided. I am acquainted with the Batesville Institute building. That building was in possession of Hirsch and Adler from about the commencement of the war untill about six
154 years thereafter. The condition of the building, when they went into it, was *in* pretty fair *condition*, not in the best of order. The general condition during the war, while I knew it, was bad; it leaked and the plaster was coming off, and I do not consider it fit to live in for anything like a decent house. Street and Martin were in it about two years ago, and moved out on account of its leaking.

As well as I remember, Hirsch & Adler had possession of two rooms in it untill the Federal soldiers came and made them move out of one room. It was the time General Livingston came there.

There was little demand for business houses in Batesville during the war. The merchants through that county were pillaged by the soldiers during the war. There was not much mercantile business done at Batesville during the war. There were many vacant houses in Batesville during the war. The population of Batesville now is about 1,200 or 1,500.

Taking all the circumstances, I should think the rent of the
155 Batesville Institute, for a person to take it and take care of it, that part Hirsch & Adler had, was not worth more than 20 to 25 dollars p'r month; because there were no persons at Batesville doing a regular merchandise business up to 1864, when I left there.

Cross-examined by Capt. L. B. Nash:

I did not live at Batesville during the time I spoke of; I lived at Jacksonport. I do not know how much of the building Hirsch & Adler had possession or control of; but I have stated what they occupied. Some time in 1863, I think, they gave up one room to the Federal soldiers under General Livingston. They staid in the Batesville Institute to preserve it from pillage & destruction, and shut up their own houses opposite. Their object, I think, was to prevent the institute being burned. It was worth more than their own houses.

After the town was occupied by the Federal soldiers there was
156 not a great demand for store and business houses. I am familiar with the prices of rent in Batesville, from the time the Federal forces came in there. I do not know of any particular business houses being rented at any stated price. Jacksonport is twenty-five miles from Batesville.

Re-examined by Judge Rose:

I was in Batesville frequently during the time spoken of. Sometimes a week; sometimes four days; sometimes two weeks.

SOL. ADLER.

Subscribed & sworn to before me September 30th, 1871.

CHA'S P. REDMOND,
U. S. Commissioner & Master.

The above deposition taken by consent.
Sept. 30th, 1870.

WATKINS & ROSE.
GARLAND & NASH.

Filed January 2nd, 1871.

FRANK E. WRIGHT, *Clerk.*

Which deposition of A. M. Moore and W. G. Roberts are in the words and figures as follows, to wit:

157 United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE, ET AL., DEFENDANTS. } In chancery.

The undersigned agree that the depositions of A. M. Moore and Wilson L. Roberts may be taken herein before the master on the interrogatories annexed hereto.
September 15th, 1870.

WATKINS & ROSE.

Interrogatories by plaintiffs.

1. State your name, age, residence, and occupation.
2. State whether you have ever lived in Batesville in this State; and if so, for what period of time.
3. State whether you have any knowledge of the values of rents in Batesville.

158 4. For how much do estimate that the Batesville Institute building would have rented for annually in United States Treasury warrants, or their equivalent, from the begin'ing of the war, in 1861, until its close, in May or June, 1865?

WATKINS & ROSE.

Cross-interrogatory.

State what length of time you were at Batesville during the period alluded to, and if you have any knowledge or information relative to the value of rents at Batesville. State upon what you base said knowledge or information.

GARLAND & NASH.

Ans. 1st. My name is Alexander M. Moore; am of lawful age; reside at Little Rock, Arkansas; occupation, clerk.

Ans. to int. 2nd. I have lived in Batesville. I lived there from August, 1858, to January, 1861,

159 Ans. to int. 3rd. I have a very vague idea of rents in Batesville. I paid little attention to them.

Ans. to int. 4th. I can only give conjecture of its value. I think five hundred dollars a year would have been a full price for the building during the war.

Ans. to cross-interrogatory. I was there all the time from August, 1858, until January, 1861, except occasional absences for a few weeks at a time. I base my knowledge of rents upon conjecture, as I have before stated, and, upon my familiarity with the building; I know it well.

ALEXANDER M. MOORE.

Subscribed and sworn to before me November 16th, 1870.

CHA'S P. REDMOND,
U. S. Commissioner & Master.

160 Answers of William L. Roberts to the for'going interrogatories taken before the master, in pursuance of the for'going agreement of counsel.

Int. 1st. My name is Wilson L. Roberts; am of lawful age; reside at Little Rock, Arkansas; occupation, a book-keeper.

Int. 2nd. I live in Batesville, Ark. I was there; lived there between 1856 and 1860.

Int. 3rd. I have a very limited knowledge of rents in Batesville.

Int. 4th. I do not think it would have rented for more than $500.00 p'r annum, from 1861 to 1865, at the outside.

Ans. to cross-inter'ogatory. I was in Batesville in the latter part of 1862 and first part of 1863—about three month' in all. I was there in the summer of 1863 about two weeks. I base my knowledge of rents in Batesville from having lived there, and from a general knowledge of the Batesville Institute building.

W. L. ROBERTS.

Subscribed and sworn to before me this November 7th, 1870.

CHA'S P. REDMOND,
U. S. Commissioner & Master.

161 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The for'*gone* deposition' of Alexander M. Moore and Wilson L. Roberts were taken before me at Little Rock, Arkansas, in pursuance of the agreement and inter'ogatories and cross-inter'ogatories annexed to the same. And I so hereby certify.

And I further certify that neither of the parties *were* present, either in person or by attorney.

Witness my hand as U. S. commissioner and master in this cause.

CHA'S P. REDMOND,
U. S. Commissioner and Master.

Filed Jan. 2nd, 1871.

FRANK E. WRIGRT, *Clerk.*

And, on Jan'y 19th, 1871, before the clerk in vacation, as follows:

M. KAUFMAN & Co.
vs. } 39.
BATESVILLE INSTITUTE.

162 And now this day come the defendants, by Garland and Nash their solicitors, and file herein their exceptions to the master's

report heretofore filed in this cause on the second day of January, A. D. 1871.

Which exceptions are in the words & figures following, to wit:

In the United States circuit court, eastern district of Arkansas. In chancery.

M. KAUFMAN & CO., COMPLAINANTS,
vs.
BATESVILLE INSTITUTE & OTHERS, DEFENDANTS.

Exceptions taken by the said defendants to the master's report.—Filed in said cause on the 2d day of Jan'y, A. D. 1871.

Come said defendants and except to the said master's report, and for cause show:

1st. Said report charges complainant with only the sum of $600 per annum for the rent of the property named in the pleadings and
163 depositions, when it is proved in said cause that said property was worth at least the sum of seventeen hundred dollars per an'um; and with this sum said complainants should be charged.

2nd. Said report fails to charge said complainant with interest on the an'ual unpaid rents of said property, when it should have charged interest thereon.

3rd. Said report charges said complainants with only such rents of said property as they realized or received therefor, when they should have been charged with such rent as the property was reasonably worth during the time they held or rented the same.

4th. Said report charges said complainants with rents for only three years and four and one-half months, when, from the pleadings and proof in the case, they should be charged with rents regularly and continuously from the first day of January, 1861, to the filing of said report. And from the pleadings and proof said complainants are charg'able with the rents of the two store-rooms and cellars received by them for
164 a considerable portion of the year 1860.

5th. Said report shows a balance due from defendants to complainants of over $15,000.00, when in truth, from the pleadings and proof, it appears there is nothing due them, said complainants, from defendants, and they are not entitled to any decree in said cause as against defendants.

Wherefore said defendants pray the matters and things in said report herein and hereby excepted to be corrected in said report, said report in respect thereof be reformed, and a decree rendered in said cause in favor of said defendants.

Filed Jan'y 19th, 1871.

FRANK E. WRIGHT, *Clerk.*

And on February 9th, 1871, as follows:

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

165 This cause being submitted to the court on exceptions to the master's report, the exceptions to said report, that the master has not allowed interest on the an'ual rents is sustained, and this cause is

again referred to the master, with directions to allow interest at six per cent. on the amount of rents received by complainants in each year down to the date of the filing of the master's report; and that the master report the said amount of interest on the an'ual rents, and the amount due complainants after deducting the net rents, and interest thereon, to the court forthwith.

And afterwards, on the same day, the master having filed his supplemental report showing the interest on the an'ual rents and amount due complainants to January 2d, 1871, it is thereupon ordered that all exceptions other than as above allowed, be overruled, and that said report be in all things confirmed, and that the master be allowed the sum of one hundred and fifty dollars ($150.00) as compensation for his
166 services in this cause; which supplementary report is in the words and figures following, to wit:

Circuit court of the United States, eastern district of Arkansas.

M. KAUFMAN & CO.
vs.
BATESVILLE INSTITUTE.

In accordance with the order of the court, made in this cause, this day of , A. D. 1871, that the receipts and expenditures of complainants from and on the premises in controversy for the period of their possession were as follows:

Year.	Receipts.	Expenditures.
1861	600 00	75 75
1862	600 00	
1863	600 00	
1864	225 00	
1865. Expenditures exceed income.		
1866	400 00	
1867	1,128 75	291 35
1868. Expenditures exceed income.		
1869	886 03	301 75

167

Year.	Receipts.	Expenditures.
1870	1,157 00	313 00

That the net amount of receipts for rent, over and above the expenditures for repairs, *are*, in each year, as follows:

Year.	Net rents.
1861	$524 25
1862	600 00
1863	600 00
1864	225 00
1865	
1866	400 00
1867	837 40
1868	
1869	584 28

On which amount the master has computed the interest at six per cent. per an'um from the end of the year in which said amounts were received respectively, down to the date of filing the original master's report in this cause, to wit, January second, A. D. 1871, shown as follows:

168	1861. Interest on $524.25 for 9 years		$283 09
	1862. Interest on 600.00 for 8 years		288 00
	1863. Interest on 600.00 for 7 years		252 00
	1864. Interest on 225.00 for 6 years		81 00
	1866. Interest on 400.00 for 4 years		96 00
	1867. Interest on 837.40 for 3 years		150 73
	1869. Interest on 584.28 for 1 year		35 05
	Making the total amount of interest on said yearly net rents.		$1,185 87

Which, supposing defendants are allowed for rents received by complainants for whole period of their possession to date of master's report, would make the account between the parties stand as follows:

Principal and interest of judgment to Jan. 2d, 1871		$19,997 25
Net rent previous to May 29th, 1865	$2,149 25	
Net rent subsequent to May 29th, 1865	2,252 13	
Total net rents	4,401 38	
Interest	1,185 87	
Total rent and interest thereon		$5,587 25
Balance due complainants Jan. 2d, 1871		$14,410 00

All of which is respectfully submitted.

CHA'S P. REDMOND, *Master.*

Filed Feb'y 9th, 1871.

FRANK E. WRIGHT, *Clerk.*

169 And on February 11th, 1871, as follows:

MAX. KAUFMAN, LEWIS KAUFMAN, & CALINORE Hirsch, as M. Kaufman & Co., plaintiffs,
vs.
BATESVILLE INSTITUTE ET AL., DEFENDANTS.

Now on this day came the plaintiffs, by Watkins & Rose, their solicitors, and also came the defendants, the Batesville Institute and John E. Womack, by Garland and Nash, their solicitors, and this cause was submitted on the exceptions taken by the said defendants to the report of the master herein, and the said exceptions having been duly considered by the court, the court is of the opinion that the master did err in failing to allow the amount of the rents paid in each year by the Batesville Institute building, to be credited as of the date of such year, so as to lessen the amount of the interest estimated on the judgement rendered in the Independence County circuit court, in favor of Hirsch & Adler, which, having been assigned to the plaintiffs, forms the cause of action in this case. And all the other grounds of exceptions taken by the

defendants are overruled; to which the said defendants at
170 the time except, and by leave of the court their exceptions are here noted of record. And now the court refers said against to the master to be restated according to the rule given by the court; and the master having taken some time to consider of the same, returns here into court his second report, which is in all things fully approved, showing that the Batesville Institute is indebted, over and above all proper credits and set-offs, to the said plaintiffs, in the sum of fourteen thousand four hundred and ten dollars, to bear interest at ten per cent. p'r annum, from January 2, 1871, until paid, which, by the decree of the court, hereinbefore rendered and now re-affirmed, constitutes, by reason of the judgement of the said Independence County circuit court, a lien on lot number eight of block number thirteen, in the town of Batesville, in the county of Independence and State of Arkansas, having force and effect from the 15th day of January, 1861, the date of the filing of the mechanics' lien in the said State court, which was continued by the said judgement, and because the said sum due on the said judgement
171 has not been paid, it is ordered and decreed that the said real estate be sold in order to pay the same; that the said sale be for cash in hand, and be made at the door of the court-room of this court, twenty days' notice of the time, place, and terms of such sale to be first given by advertisement inserted in some newspaper published in the city of Little Rock, and that the proceeds of said sale be applied to the payment of the sum of money due the plaintiffs as aforesaid, and that the defendants pay all the costs of this suit. And it is further ordered that Cha's P. Redmond, esq'r., master in this cause, be allowed the sum of one hundred and fifty dollars for his labor and services herein, to be taxed as other costs. And Robert F. Catterson, esq'r., is hereby appointed a commissioner to carry this decree into effect, who shall report all his proceedings here into court. And it is further ordered that this decree have force and effect as if rendered and enrolled on the first day of February, 1871. And this cause is retained for further directions.

Messrs. Watkins and Rose, solicitors for complainants, having filed in the clerk's office, on Feb'y 28, 1871, a statement that they claim a lien upon the property mentioned in this decree, for the sum of one thousand dollars, ($1,000.00) for professional services rendered to complainants in the prosecution of this cause, it is ordered that this memorandum be endorsed on the margin of said decree.

172 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that, at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday the 10th day of April, anno Domini one thousand eight hundred and seventy-one, at the United States court-room, in the city of Little Rock, Arkansas, the honorable John F. Dillon, judge of the circuit court of the United States for the 8th judicial circuit, and Hon. Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 20th, 1871, as follows:

M. KAUFFMAN & Co.
vs.
BATESVILLE INSTITUTE ET ALS.

Come Garland and Nash, solicitors for the defendants herein, and suggest and show to the court that since the last term of this court one of

said defendants, Thomas Cox, has departed this life, and William J. Erwin is the legally qualified administrator of the said Cox, and thereupon said complainants admit the truth of such suggestions, and the said Batesville Institution, and the said Erwin, as such administrator, prayed an appeal to the Supreme Court of the United States from the decree heretofore rendered herein, which said appeal is granted.

173 *Agreement for depositions.*

In the United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE AND OTHERS, DEFENDANTS.

The undersigned, counsel in the above case, agree that depositions may be taken in the above cause, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, on the 30th day of August, 1869, at the dwelling-house of John E. Womack, in the county of Woodruff, and State of Arkansas, without any commission, before any officer qualified by law to take the same, and that the taking of the same may be continued at the same place, between the same hours, from day to day until completed, reserving all questions of relevancy or competency.

Aug. 23d, 1869.

WATKINS & ROSE,
Attorney' for Plaintiffs.
GARLAND & NASH,
Attorney' for Defendants.

174 Deposition of a witness taken and subscribed before me, Thomas E. Erwin, United States commissioner for Woodruff County, in the State of Arkansas, duly commissioned as such, on the 31st day of August, A. D. 1869, between the hours of 9 o'clock in the forenoon, and 4 o'clock in the afternoon of said day, at the dwelling-house of John E. Womack, in the county of Woodruff, in the State of Arkansas, in pursuance of an agreement to take depositions, hereto annexed, to be read in evidence in a certain cause now pending in the United States district court for the eastern district of Arkansas, wherein Max Kaufman, Lewis Kaufman, Colman Hirsch, partners, doing business under the firm-name of M. Kaufman & Co., are plaintiffs, and the Batesville Institute and others are defendants.

On the part of the defendants.

JOHN E. WOMACK, a witness known to me, of lawful age, being to me at the same time and place produced, and being by me first sworn to testify to the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did, then and there, on his oath aforesaid, depose and say as follows, to wit:

175 I, John E. Womack, am acquainted with the defendants in this suit. I also know Hirsch and Adler, who have for many years done business in Batesville, Arkansas.

In the year 1859 Mr. Thomas Welch and myself had a contract to build a block known as the "Batesville Institute building," in the town of Batesville. It is the property in controversy in this suit.

In the year 1860, or thereabouts, the parties comprising the stock company failed to pay for the building, as the work proceeded, according to the contract; whereupon an arrangement was made with Messrs. Hirsch and Adler to take the building and complete the unfinished work thereon, and to occupy the building, paying rents therefor at what the building was reasonably worth per an'um.

The work which they agreed to do was to alter the roof of the building, and to dig and finish two cistirns in the rear of the building. This work has not, as I am aware of, been done by them. They have had entire control and possession of the building from 1859 or 1860,
176 down to this time; collecting all the rents and exercising all rights pertaining to the ownership of the same. I think the rents of the building worth thirty-six hundred dollars ($3,600) per annum at least. Single rooms for stores in the building, have rented at from $50 to $75 per month. The rent of the building was, by agreement made with Hirsch and Adler, to be applied upon the indebtedness which Hirsch and Adler held against Thomas Welch and myself for advances made by them in building the institute. The unfinishep work undertaken by Hirsch and Adler was estimated to cost about two thousand dollars. As before stated, that work has never been done. I estimate the building, as it now stands, to be worth twenty thousand dollars.

JOHN E. WOMACK.

I, Thomas E. Erwin, an acting and duly commissioned United States commissioner for Woodruff County, in the State of Ark., do hereby certify that the foregoing deposition of John E. Womack was taken before me on the 31st day of August, between the hours, and at
177 the place in the caption thereof above mentioned; that the examination and statement of said deponent were reduced to writing in my presence at the time and place aforesaid, and subscribed and sworn to then and there, and that the said deponent is a resident of Woodruff County, in the State of Arkansas.

In testimony whereof I, Tho's E. Erwin, United States commissioner, do hereunto set my hand, at the dwelling-house of John E. Womack, in Woodruff County, State of Arkansas, this 31st day of August, A. D. 1869.

THO'S E. ERWIN,
U. S. Commissioner for Woodruff County, Ark.

Have no seal. T. E. E.

178 *Agreement for depositions.*

In the United States circuit court, east. district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE ET AL., DEFENDANTS.

The undersigned counsel in the above case agree that depositions may be taken in the above cause, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, on the first day of December, 1869, at the land-office of Byers & Cox, in the town of Batesville, county of Independence, and State of Arkansas, without any commission, before any officer qualified by law to take the same, and

that the taking of the same may be continued at the same place between the same hours from day to day until completed, reserving all questions of relevancy or competency.

WATKINS & ROSE,
Attorney' for Plaintiff.
GARLAND & NASH,
Attorney' for Defendant.

179 I reside near Batesville, in Independence County, State of Arkansas. I am acquainted with Hirsch and Adler, who did business in Batesville as merchants, before the war. I also know the other parties in this suit. The property involved is known as the Batesville Institute building and the lots belonging thereto. The building was completed as it now is, I think, in 1860. The builders were Messrs. John E. Womack and Thomas Welch. The building is a substantial brick with stone foundations, three stories in height, besides the basement. The first floor is arranged for two large stores, with counting-room and other conveniences. The second floor is arranged into six rooms suitable for offices and other purposes. The third floor is arranged for Odd-Fellows' and Masonic halls, with anti-rooms for each hall. The whole structure is about sixty-five feet, fronting on the street, by about one hundred feet deep.

The proprietors failed to pay the builders, the said Womack and Welch, as the work progressed, according to contract, and they ob-
180 tained assistance from Hirsch and Adler in goods and money; I do not know to what amount. Mr. Hirsch at the time stated to me that they were making these advances to the contractors, as they intended renting and occupying the stores when finished, and I understood that they were thus paying rents in advance.

In 1861 or thereabouts the contractors further secured the claim of Hirsch and Adler by giving them possession of the entire building to use and to rent until the rents would cancell their indebtedness to Hirsch and Adler.

I do not know what the rents have amounted to up to this time. I was absent from Batesville a part of the time in 1863 and 1864. At all other times the building has been occupied by responsible parties, chiefly merchants, the United States Government, law-offices, printing-office, schools, the lodges, &c.

At the usual rates of renting in Batesville for the last nine years the building was worth at the least twenty-five hundred dollars per a'num. Hirsch and Adler, by their agents or assignees, still occupy and receive the rents of the building up to this time. I do not now know of
181 or recollect any other fact or matter connected with this transaction which would be of any advantage to either party in this suit.

JOHN CAMPBELL.

Subscribed and sworn to before me on the 1st day of December, A. D. 1869.

ELISHA BAXTER,
Register in Bankruptcy.

I, William H. Rosa, being duly sworn, do depose and say that I was for sixteen months in the employ of the Bureau of R., F. and A. L., at Batesville, Arkansas, and also acted in the capacity of clerk of the officer commanding the post of Batesville; that the Bureau rented of Mr. Si-

mon Adler a room for an office, paying for the same at the rate of $17.50 per month for nine months. The quartermaster rented the adjoining room in the same building, to wit, the Batesville Institute, for an office for the commanding office', at the same rent, viz, $17.50 per month for the period of sixteen months, and also rented one of the large store-rooms and cellar, from about the 1st of May, 1867, to
182 May, 1869, at the rate of $40.00 per month. Other rooms in the building were also rented (during the occupancy of the same by the U. S. authorities) by other parties, but cannot state the rates of rent nor length of time occupied.

W'M H. ROSA.

Subscribed and sworn to before me on the first day of December, 1869.

ELISHA BAXTER,
Register in Bankruptcy.

183 UNITED STATES OF AMERICA,
State of Arkansas, County of Jackson,
City of Jacksonport:

I certify that, on the 10th day of October, A. D. 1870, before me, a commissioner of the United States in & for the eastern district in the State of Arkansas, duly commissioned and qualified, at my office, in said city, county, and State, between the usual hours of business, w*as* produced to, and personally came before me, Nathan Adler and Alex. Adler, witnesses in behalf of the plaintiff, to depose in a civil cause depending in the circuit court of the United States for the eastern district of Arkansas, wherein M. Kaufman & Co. are plaintiffs, and the Batesville Institute et al. are defendants in chancery, and whos' testimony is alleged to be material in said civil cause in behalf of the plaintiffs.

And each of the said witnesses, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly
184 sworn to testify the whole truth, and nothing but the truth, touching the matters in controvercy in said civil cause, did depose and say as follows, viz:

In answer to the first interrogatory he says:

1. Nathan Adler, in answer to 1st inter'ogatory, says: My name is Nathan Adler; aged 42 years; residing in Jacksonport, Jackson County, Arkansas, and occupation a merchant.

2. In answer to 2d inter'ogatory he says: Was acquainted with Israel Adler in his life-time, and am acquainted with Aaron Hirsch and M. Kaufman & Co.

3. In answer to 3d inter'ogatory he says: I know the Batesville Institute in Batesville, Ark.

4. In answer to the 4th inter'ogatory he says: Hirsch and Adler took possession of said building in 1861, and held the same until 1864, and occupied the two lower rooms.

5. In answer to 5th inter'ogatory he says: The roof leaked at the time they took possession of it, and the building generally was in bad repair.

6. In answer to 6th inter'ogatory he says: There was no demand for such building from 1861 to 1864.

185 7. In answer to 7th inter'ogatory he says: Hirsch and Adler

rented no part of said building that I know of during the time they had possession of it.

8. In answer to 8th inter'ogatory he says: Hirsch and Adler made some repairs upon the building, but do not know what they cost.

9. In answer to 9th inter'ogatory he says: The an'ual rents of that part of the building, during the time Hirsch and Adler had possession, *was* worth nothing, and they only took possession to protect the property.

10. In answer to 10th inter'ogatory he says: I know of no other matter pertaining to said rents.

11. In answer to 11th inter'ogatory he says: M. Kaufman & Co. and Aaron Hirsch live in New Orleans, State of Louisiana.

12. In answer to 12th inter'ogatory he says: Israel Adler, at the time of his death, lived in New Orleans, La., and died in M'ch, 1867.

13. In answer to 13th inter'ogatory he says: Israel Adler left Batesville in the year 1862, and Aaron Hirsch in the year 1864.

Cross-inter'ogatories:

1. In answer to 1st cross-inter'ogatory he says: Israel H. Adler was my brother.

186 2. In answer to 2d cross-inter'ogatory he says: Am of no kin to any of the other parties.

3. In answer to 3d cross-inter'ogatory he says: I occupied no part of Batesville Institute.

4. In answer to 4th cross-inter'ogatory he says: I was not interested in the possession or use of the Batesville Institute by Hirsch & Adler.

5. In answer to 5th cross-inter'ogatory he says: Hirsch and Adler kept the building in repair, but do not know what the repairs cost.

6. In answer to 6th cross-inter'ogatory he says: I collected no rent on said building.

7. In answer to 7th cross-inter'ogatory he says: Was not interested in the possession of said building by Hirsch and Adler, nor ever received any profits.

8. In answer to 8th cross-inter'ogatory he says: As before stated, the rents were worth nothing from 1861 to 1864, during the war.

9. In answer to 9th cross-inter'ogatory he says: By being a resident of Batesville, and my personal knowledge and observation of matters and things at the time the war broke out.

10. In answer to 10th cross-inter'ogatory he says: Am not interested to any extent whatever in the event of this suit.

NATH. ADLER.

187 1. My name is Alex'r Adler; residence, Jacksonport, Jackson County, Arkansas; age, 45 years; occupation, a merchant.

2. In answer to 2d inter'ogatory he says: Was acquainted with Israel Adler, in his life time, and am acquainted with Aaron Hirsch and plaintiffs, M. Kaufman & Co.

3. In answer to 3d inter'ogatory he says: I know the Batesville Institute in Batesville, Ark.

4. In answer to 4th inter'ogatory, he says: Hirsch and Adler took possession of said building in 1861 or 1862, for the protection of the same, and occupied the lower rooms of said building, but do not recollect how long they held possession of the same.

5. In answer to 5th inter'ogatory he says: The building was in bad repair during the time they had possession of it.

6. In answer to 6th inter'ogatory he says: At that time there was

no demand for such buildings, or no other, in Batesville, on account of the war.

7. In answer to the 7th inter'ogatory he says: Hirsch and Adler rented no part of said building during the time they had possession of it, that I know of.

8. In answer to 8th inter'ogatory he says: Hirsch and Adler
188 made some repairs on the building during the time they had possession of it, but I do not know the extent of said repairs, nor what they cost.

9. In answer to 9th inter'ogatory he says: During the time that Hirsch and Adler held possession of said building, the annual rents were of no value, as no property in Batesville during the war would rent for anything.

10. In answer to 10th inter'ogatory he says: Since the war and with the repairs put upon the building, the rents have been worth something, say about ($600.00) six hundred dollars a year.

11. In answer to 11th inter'ogatory he says: M. Kaufman & Co. and Aaron Hirsch live in New Orleans, State of Louisiana.

12. In answer to 12th inter'ogatory he says: Israel H. Adler lived, at the time of his death, in New Orleans, La., and died in March, 1867.

13. In answer to 13th inter'ogatory he says: Israel H. Adler left Batesville in the year 1862, and Aaron Hirsch in 1864.

Cross-interrogatories:

1. In answer to 1st cross-interrogatory, he says: Israel H. Adler was my brother.

2. In answer to 2d cross-inter'ogatory he says: I married the niece of Aaron Hirsch, and am of no kin to the other parties.

189 3. In answer to 3d cross-inter'ogatory he says: I occupied no part of the Batesville Institute.

4. In answer to 4th cross-inter'ogatory he says: I was not interested in the possession or use of the Batesville Institute by Hirsch and Adler.

5. In answer to 5th cross-inter'ogatory he says: Hirsch and Adler, to the best of my knowledge, kept the building in repair while they had it in possession, but what the repairs cost I do not know.

6. In answer to 6th cross-inter'ogatory he says: I collected no rent on said building, whatever.

7. In answer to 7th cross-inter'ogatory he says: Was not interested in the possession of said building by Hirsch and Adler, nor ever received any profits.

8. In answer to 8th cross-inter'ogatory he says: During the war, as before stated, the rents were worth nothing, but since the war, and repairs being made, the rents would average about $600.00 per year.

9. In answer to 9th cross-inter'ogatory he says: In giving my answer I have been governeed by the fact that I resided in Batesville, and know by personal observation how buildings were used and rented in said town.

190 10. In answer to 10th cross-inter'ogatory he says: I am not interested to any extent whatever in the event of this suit.

ALEX. ADLER.

United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE, ET AL., DEFENDANTS. } In chancery.

The undersigned agree that the deposition of Nathan Adler and Alex.

Adler may be taken herein on the inter'ogatories hereto annexed, to be read before the master in this cause.

September 30th, 1870.

WATKINS & ROSE,
For Plaintiffs.
GARLAND & NASH,
For Defendants.

Inter'ogatories for plaintiff.

1. State your name, residence, age, and occupation.
2. State whether you were acquainted with Israel H. Adler in his lifetime, and whether you are acquainted with Aaron Hirsch, and the plaintiffs, M. Kaufman & Co.
3. State whether you know the Batesville Institute building in Batesville, Arkansas.

191 4. State how long Hirsch & Adler had the possession of said building, and how much of said building was in their possession.

5. State the condition of said building during the time that they had possession of it.
6. State what demand there existed in Batesville for such buildings during that time.
7. State whether Hirsch and Adler rented out any part of said building during the time that they had control of it; and if so, on what terms, and how much rents they collected on it.
8. State whether Hirsch and Adler made any repairs on said building; and, if so, the amount and value thereof.
9. State what you estimate the average an'ual value of the rents of that part of said building that Hirsch and Adler had possession of to have been worth during the time that they had it.
10. State any other matter that you may know pertaining to said rents.
11. State where the plaintiff', M. Kaufman & Co., and Aaron Hirsch live.
12. State where Israel H. Adler lived at the time of his death, and when he died.
13. State at what time he and Aaron Hirsch left Batesville and ceased to reside in Arkansas.

WATKINS & ROSE,
For Plaintiffs.

192 Cross-inter'ogatories.

1. What kin were you to Israel Adler?
2. Are you of kin to any other of the parties named in the foregoing inter'ogatories? If yea, what kin?
3. Did you occupy said Batesville Institute, or any part of it, and how much of it?
4. Were you interested with Hirsch and Adler in their possession and use of said Batesville Institute?
5. Did you, or did Hirsch and Adler, keep said building (Batesville Institute) in good repair while you or they held it, and what did it cost to keep it in repair?
6. How much rent did you collect on said Batesville Institute?
7. To what extent were you interested in the use and possession of said building with Hirsch and Adler, and how much of their profits therefrom did you receive?

8. State fully and minutely all the facts and circumstances upon which you make any estimate of the average an'ual rents of said building, or any part of it.

9. In giving your answers, state how you know the matters
193 and things contained in them.

10. To what extent are you interested in the event of this suit?

GARLAND AND NASH,
For Defendants.

I further certify that the foregoing depositions of the said witnesses were then and there reduced to writing by me, in the presence of each of the said deponents, respectively, and by them severally subscribed in my presence, after having been so reduced to writing.

I further certify that the reason for taking said depositions was, and is, and the fact was and is, that the several deponents live at the city of Jacksonport, in said State of Arkansas; that no notice was made out or given by me to said defendants, or their attorneys, to be present at the taking of said depositions, and to put inter'ogatories, if they thought fit. Said depositions were taken so as to enable notice to be given on inter'ogatories hereto annexed.

I further certify that I am not of counsel nor attorney to either of the parties to this suit, nor interested in the event of this cause.

194 I further certify that, it being impracticable for me to deliver said depositions with my own hand into the court for which it was taken, I have retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by the United States mail to the said court for which it was taken, and to remain under my seal until there opened.

I further certify that the fee for taking said deposition, amounting to five dollars, has been paid to me by the plaintiff, and that the same is just and reasonable for the servises performed.

Given under my hand and official seal, at my office in Jacksonport, this 10th day of October, A. D. 1870.

[L. S.] RALPH R. KELLOGG,
U. S. Commissioner.

Opened and published by order of court, November 5th, A. D. 1870.
FRANK E. WRIGHT, *Clerk.*

195 *Depositions in U. S. courts.*

UNITED STATES OF AMERICA,
State of Arkansas, County of Jackson, City of Jacksonport:

I certify that, on the 10th day of October, A. D. 1870, before me, a United States commissioner in and for the eastern district, in the State of Arkansas, duly commissioned and qualified, at my office in said city, county, and State, between the usual hours of business, was produced to and personally came before me, Ben. Adler, witnesses in behalf of the plaintiffs, to depose in a civil cause depending in the circuit court of the United States for the eastern district of Arkansas, wherein M. Kaufman & Co. are plaintiffs, and The Batesville Institute et al. are defendants in chancery, and whose testimony is alleged to be material in said civil cause in behalf of the plaintiffs; and *each of* the said witnesses being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn to testify the whole truth,

and nothing but the truth, touching the matters in controversy in said civil cause, did depose and say as follows, viz:

In answer to the first inter'ogatory he says:

196 1. My name is Ben. Adler; age, 39 years; residence, Jacksonport, Jackson County, State of Arkansas; occupation, a merchant.

2. In answer to 2d inter'ogatory he says: I know the Batesville Institute, in Batesville, Arkansas.

3. I' answer to third inter'ogatory he says: Hirsch and Adler took possession of said building, I think, in 1861, and at that time occupied the two lower rooms; but how long they held possession I do not know.

4. In answer to fourth inter'ogatory he says: The building was in bad repair at the time they took possession of it.

5. In answer to fifth inter'ogatory he says: There was not much demand for such buildings in Batesville at that time; in fact, none.

6. In answer to sixth inter'ogatory he says: Hirsch and Adler rented no part of said building out while they had possession of it, that I know of.

7. In answer to seventh inter'ogatory he says: I do not know whether Hirsch and Adler made any repairs upon said building while in their possession.

197 8. In answer to eighth inter'ogatory he says: I do not think the rent of the two lower rooms of said building, at the time Hirsch and Adler had possession of them in 1861, worth anything.

Cross-inter'ogatories:

1. In answer to first cross-inter'ogatory he says: Israel Adler was my brother.

2. In answer to second cross inter'ogatory he says: Am no kin to any other of the parties.

3. In answer to third cross-inter'ogatory he says: I occupied no part of the Batesville Institute.

4. In answer to fourth cross-inter'ogatory he says: I was not interested with Hirsch and Adler in their possession or use of said building.

5. In answer to fifth cross-inter'ogatory he says: I believe that Hirsch and Adler kept the house in repair, but know nothing of the costs of repairs.

6. In answer to sixth cross-inter'ogatory he says: Never collected any rent on said building.

7. In answer to seventh cross-inter'ogatory he says: I was not interested with Hirsch and Adler in the possession of said building in any way whatever, nor never received any profits therefrom.

198 8. In answer to eighth cross-inter'ogatory he says: In my estimate of the value of rent in 1861, when Hirsch and Adler took possession, I base it upon the fact that, as the war had begun, there was no demand for buildings, and those owning buildings were anxious to get some one to take charge of them without any rent.

9. In answer to ninth cross-inter'ogatory he says: Have given my answers from personal observation, and being acquainted with the building.

10. In answer to tenth cross-inter'ogatory he says: I am in no way interested in the event of this suit.

BEN. ADLER.

United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE ET AL., DEFENDANTS. } In chancery.

The undersigned agree that the deposition of Ben. Adler may be taken herein, on the inter'ogatories hereto annexed, to be read before the master in this cause.

Sept. 30th, 1870.

WATKINS & ROSE, *for Pl'ffs.*
GARLAND & NASH, *for Def'ts.*

199 Inter'ogatories for plaintiffs.

1. State your name, age, residence, and occupation.
2. State whether you know the Batesville Institute, in Batesville, Arkansas.
3. State how long Hirsch and Adler had possession of said building, and how much of said building was in their possession.
4. State condition of said building during the time that they had possession of it.
5. State what demand there existed in Batesville for such buildings during that time.
6. State whether Hirsch and Adler rented out any part of said building during the time that they had possession of it; and if so, on what terms, and how much rent they collected on it.
7. State whether Hirsch and Adler made any repairs on said building; and if so, the am't and value thereof.
8. State what you estimate the average an'ual value of the rents of that part of said building that Hirsch and Adler had possession of, to have been worth during the time that they had it.

WATKINS AND ROSE,
For Plaintiffs.

200 Cross-inter'ogatories.

1. What kin were you to Israel Adler?
2. Are you of kin to any other of the parties named in the foregoing inter'ogatories? If yea, what kin?
3. Did you occupy said Batesville Institute, or any part of it, and how much of it?
4. Were you interested with Hirsch and Adler in their possession and use of said Batesville Institute?
5. Did you, or did Hirsch and Adler, keep said building (Batesville Institute) in good repair while you or they held it; and what did it cost to keep it in repair?
6. How much rent did you collect on said Batesville Institute?
7. To what extent were you interested in the use and possession of said building, with Hirsch and Adler, and how much of their profits therefrom did you receive?
8. State fully and minutely all the facts and circumstances upon which you make any estimate of the average an'ual rents.
9. In giving your answers state how you know the matters and
201 things contained in them.
10. To what extent are you interested in the event of this suit?

GARLAND AND NASH,
For Defendants.

I further certify that the foregoing depositions of the said witnesses were then and there reduced to writing by me in the presence of each of the said deponents respectively, and by them severally subscribed in my presence after having been so reduced to writing.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that the several deponents live at the city of Jacksonport, in said State of Arkansas, and that no notice was made out or given by me to said defendants or their attorneys to be present at the taking of said depositions, and to put inter'ogatories if they thought fit, because said depositions were taken on inter'ogatories hereto annexed.

202 I further certify that I am not counsel nor attorney to either of the parties to this suit, nor interested in the event of this cause.

I further certify that, it being impracticable for me to deliver said depositions with my own hand into the court for which it was taken, I have retrined the same for the purpose of being sealed up by me and speedily transmitted, by the United States mail, to said court, for which it was taken, and *and* to remain under my seal until there opened.

I further certify that the fee for taking said deposition, amounting to two & $\frac{50}{100}$ dollars, has been paid to me by the plaintiff', and that the same is just and reasonable for the services performed.

Given under my hand and official seal at office in the city of Jacksonport, this tenth day of October, A. D. 1870.

[L. S.] RALPH R. KELLOGG,
U. S. Commissioner.

203 Opened and published by order of court, November 5th, 1870.
FRANK E. WRIGHT, *Clerk.*

204 *Depositions in U. S. courts.*

UNITED STATES OF AMERICA,
State of Arkansas, County of Jackson, City of Jacksonport:

I certify that on the 11th day of October, A. D. 1870, before me, a commissioner of the United States in and for the eastern district, in the State of Arkansas, duly commissioned and qualified, at my office, in said city, county, and State, between the usual hours of business, was produced to and personally came before me W'm F. Mason, witnesses in behalf of the plaintiffs, to depose in a civil cause depending in the circuit court of the United States for the eastern district of Arkansas, wherein M. Kaufman & Co. are plaintiffs, and The Batesville Institute et al. are defendants, in chancery, and whose testimony is alleged to be material in said civil cause in behalf of the plaintiffs; and *each of* the said witnesses being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn to testify the whole truth, and nothing but the truth, touching the matters in controversy in said civil cause, did depose and say as follows, viz:

In answer to the first interrogatory he says:

205 United States circuit court, eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFF',
vs.
BATESVILLE INSTITUTE, DEFENDANTS. } In chancery.

The undersigned agree that the depositions of William F. Mason and W. Alexander Bevans, and any other witness for the plaintiffs, may be

taken herein, (to be read before the master,) on the inter'ogatories hereto annexed.

October 1, 1870.

WATKINS & ROSE,
For Plaintiffs.
GARLAND & NASH,
For Defendants.

Inter'ogatories for plaintiffs.

1st. State your name, age, residence, and occupation.

2. State whether you know the Batesville Institute building, in Batesville, Arkansas.

3. State how long Hirsch and Adler had possession of said building and *and* how much of said building was in their possession.

4. State the condition of said building during the time that they had possession of it.

206 5th. State what demand there existed for such building in Batesville during that time.

6. State what, under all the circumstances of the war, the state of trade, &c., you consider the annual average value of the rents of said building to have been *worth* during the war.

WATKINS & ROSE.

Cross-inter'ogatories.

1st. In answering the foregoing inter'ogatories, state how you knew the facts detailed, and fully your opportunities of knowing them.

2nd. State particularly in what kind of repairs said Hirsch and Adler kept said building while they held it, and how much said repairs cost.

3rd. How much rent did said Hirsch and Adler receive for said building or for any part thereof?

GARLAND AND NASH,
For Defendants.

207 1st. My name is W'm F. Mason; aged 33 years; residing at Jacksonport, Arkansas; and a clerk by occupation.

2nd. In answer to 2nd inter'ogatory he says: Knew the Batesville Institute, Batesville, Arkansas.

3rd. In answer to the 3rd inter'ogatory he says: Hirsch and Adler took possession of the building before completion and furnished the means to complete it, and I think had control of the whole building, except the Masonic hall.

4th. In answer to the 4th inter'ogatory he says: Up to the war it was in good repair; but during the war it was torn to pieces.

5th. In answer to 5th inter'ogatory he says: I do not think there was any demand for such buildings at that time, as during the war no rents could be had.

6th. In answer to 6th inter'ogatory he says: I consider, under the circumstances of the war, &c., that during the war the an'ual average value of the rents of said building was *worth* nothing.

Cross-inter'ogatories.

208 1. In answer to 1st cross-inter'ogatory he says: Previous to the war I frequently visited Batesville, and Hirsch and Adler informed me of the condition of the Batesville Institute; that they had to

take the building and advance the means to complete it, and during the war was at Batesville once or twice, and immediately after the war, and found the building unoccupied, and in a dilapidated condition.

2. In answer to 2d cross-inter'ogatory he says: I do not know.

3. In answer to 3d cross-inter'ogatory he says: Do not know.

W. F. MASON.

209 I further certify that the foregoing depositions of the said witnesses were then and there reduced to writing by me in the presence of each of the said deponents respectively, and by them severally subscribed in my presence, after having been so reduced to writing.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that the several deponents live at the city of Jacksonport, in said State of Arkansas, *more than one* and that no notice was made out or given by me to the said defendants or their attorney to be present at the taking of the said depositions, and to put interrogatories, if he thought fit, because said depositions were taken on inter'ogatories hereto annexed.

I further certify that I am not of counsel nor attorney to either of the parties to this suit, nor interested in the event of this cause.

I further certify that, it being impracticable for me to deliver said deposition with my own hand into the court for which it was taken, I have retrined the same for the purpose of being sealed up by me and speedily and safely transmitted by the United States mail to the said court for which it was taken, and to remain under my seal until there opened.

I further certify that the fee for taking said deposition, amounting to two & $\frac{50}{100}$ dollars, has been paid to me by the plaintiff, and that the same is just and reasonable for the services performed.

Given under my hand and official seal, at Jacksonport, this 10th day of October, A. D. 1870.

RALPH R. KELLOGG,
U. S. Comm'r.

Instructions.

The deposition may be taken before either of the following officers, viz:

The judges of the United States, the chancellors, the judges of the supreme or superior courts, and the judges of the county courts or courts of common pleas of the several States, and the mayors or other chief magistrates of cities in the several States, the commissioners appointed by the courts of the United States to take affidavits and acknowledgments of bail, etc., or notary public.

On the back of the package to be indorsed:

"Sealed up and deposited this package in the post-office, this day of , 18 , post-paid, for the purpose of being forwarded to its destination by mail."

(Signed)

On the face of the package to be indorsed:

"To the clerk of the court of the United States, eastern district of Arkansas, Little Rock, Arkansas."

And also indorsed across the face of the package:

Depositions on the part of the , in the case of

210 Opened and published by order of court, November 5th, A. D. 1870.

FRANK E. WRIGHT, *Clerk.*

211 United States circuit court, eastern district of Arkansas, before the clerk in vacation, February 5th, A. D. 1869.

M. KAUFMAN & CO.
versus
THE BATESVILLE INSTITUTE.

And now this day come into the clerk's office said complainants, by Watkins and Rose, their solicitors, and, on their motion, it is ordered that said complainant' have leave to take the depositions of witnesses generally before any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, to be read in evidence on the trial of this cause.

Attest: CHAS. P. REDMOND, *Clerk.*

A true copy from the record.

Attest: CHAS. P. REDMOND, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States of America to any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, greeting:

You are hereby commanded to cause to come before you all witnesses whatever, and them diligently examine, as well on the part of the complainants as of the defendant, in a certain suit now pending in our circuit court for the eastern district of Arkansas, in which M. Kaufman & Co. are complainants, and the Batesville Institute is defendant, and that you then and there examine them apart, upon their respective corporeal oaths, first taken before you upon the Holy Evangelists, and that you reduce their examinations to writing; and when you shall have so taken them that you send the same, with this dedimus, closed up under your seal, to our said circut court, at the city of Little Rock, without delay.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of the United States, hath caused the seal of said circuit court to be hereunto affixed, this fifth day of February, A. D. 1869, and of American Independence the ninety-third year.

[L. S.] Attest: CHAS. P. REDMOND, *Clerk.*

212 Depositions of witnesses subscribed before me, Elisha Baxter, register in bankruptcy, &c., on the 23rd day of March, 1869, in the town of Batesville, in the county of Independance, in the State of Arkansas, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now depending in the United States circuit court, eastern district of Arkansas, wherein M. Kaufman & Co. are complainants, and The Batesville Institute defendants, on the part of the complainants

REUBEN HARPHAM, a witness known to me to be of lawful age, being to me produced, and being by me first sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforsaid, did then and there, on his oath afor'said, depose as follows, to wit:

I am acquainted with Caleman Hirsch, supposed to be one of the members of the firm of M. Kaufman & Co. I know Thomas Cox and John E. Womack. I was acquainted with Thomas Welch in his
213 life-time. I have been a resident of the town of Batesville since 1849. Womack and Welch were the contractors who built the Batesville Institute. From statements made to me by Tho's Welch in his life-time I am satisfied that Hirsch and Adler advansed considerable amounts to Womack and Welch to aid in building the Batesville Institute. Welch frequently told me that Hirsch and Adler furnished Womack and himself with supplies, materials, and whatever they needed whilst building the institute. I am at this time county clerk of Independance County and ex-officio circuit court clerk. The records of the circuit court of Independance County show that the said John E. Womack and Thomas Welch at the March term, 1861, of said circuit court obtained a judgment on their mechanics' lien against the Batesville Institute. Exhibit A, hereto attached, is a true copy of said judgment as it appears on the records of said circuit court now in my
214 office. From examination of the circuit court records of Independance County, I find that there was no circuit court held in said county from the 9th day of January, 1862, until the 6th day of November, 1865. I also find that there is now depending in said circuit court on the chansery side thereof a bill brought by William Byres, Thomas Cox, and John Ruddell against the Batesville Institute. Said bill is endorsed "Filed March 15th, 1867." There is also on the chancery side of said court a petition of Caleman Hirsch praying for the appointment of a trustee in lieu of W'm E. Gibbs, dec'd. Said petition is endorsed "Filed May 27th, 1867." Said suit of Byers, Cox, & Ruddell, institute, and the petition of Calimon Hirsch, are still depending on the chance'y court of said county.

Cross-examined:

These cases has been continued from the last term or two, and I do not know of any steps being taken to try them since suit has com-
215 menced in United States court at Little Rock by Kaufman & Co. vs. Cox, *and probably, as I am informed.* I do not know the amount Hirsch and Adler advanced to Womack & Welch. It is my understanding that Womack & Welch built a house at Jacksonport for Hirsch and Adler some time near about the time the Batesville Institute was built.

REUBEN HARPHAM.

Subscribed and sworn to before me this 25th day of March, 1869.

ELISH. BAXTER,
Register in Bankruptcy.

Exhibit A to deposition of Reuben Harpham.

In the Independance circuit court, at the March term thereof, A. D. 1861.

On the 25th day of March, A. D. 1861, it being one of the days of said term thereof, the following proceedings were had, to wit:

JOHN E. WOMACK & THOMAS WELCH, plaintiffs,
vs.
THE BATESVILLE INSTITUTE, DEFENDants. } Mechanics' lein.

216 Now on this day comes the parties af*or*'said, by their attorney, and the said defendant interposed here pleas of nil debit & payment, to which the plaintiff' enters *his* replecation and the defendant joined issue all in short on the record by consent, and neither party requiring a jury, this cause is submitted to the court sitting as a jury to try the issues joined. And the court being duly advised, and after hearing the evidence, finds that on the 1st day of January, 1861, the said plaintiffs filed in the office of the clerk of this court their account for work and labor, &c., done on the building of said defendant, known as the Batesville Institute, situated on lot No. (8) eight, of block No. (13) thirteen, in the town of Batesville, in this county, which said account was verified by affidavit as the law requires, and showed that the work was done under a written contract with the said defendant by the said plaintiffs, and an abstract thereof was by the clerk of this
217 court, on the day and year af*or*'said, entered on his judgement-docket as the law requires, whereby the said plaintiffs fixed on said house and lot of the said defendant their l*ei*n for whatever sum might be due them, &c., for work, &c., done on same; and the court further finding that said l*ei*n was filed within the time that the law requires, and that the said is justly indebted to the said plaintiffs in the sum of twelve thousand four hundred and ninety-one dollars and sixty-seven cents, ($12,491.67,) which is under the law, in such cases made and provided, a l*ei*n on the said building and lot, on the day of the filing, and the interest at 6 per cent. per annum, $124.90.

It is therefore considered by the court that the said plaintiffs, John E. Womack and Thomas Welch, do have and recover of and from the said defendant, The Batesville Institute, the said sum of twelve thou-
218 sand four hundred and ninety-one & $\frac{67}{100}$ dollars for their debt, and the further sum of one hundred and twenty-four dollars & $\frac{90}{100}$, being six p'r c't interest on said debt from the filing of said l*ei*n to this date.

It is further considered that said debt be a l*ei*n on the said building known as the Batesville Institute, situated on said lot No. 8, block No. 13, of the town of Batesville af*or*'said, and that the said building and lot be subject to sale for debt and damages af*or*'said. And the clerk of this court is ordered to incorporate the discription of the house and lot herein mentioned in the execution to be issued herein, and therein commanding the sheriff or other officer to cause to be made the said debt and damages and the costs of this suit out of said property.

It is further considered that the said plaintiff' do have and recover of and from the said defendant all their costs in and about this suit
219 sustained. And whereas the sum of $2,000.00 above the sum herein adjudged is claimed by the said plaintiffs, but is shown not yet to be due, on account of the unfinished state of the building, it is by consent expressly entered here that this judgment is no waiver of the rights of any of the parties hereto in relation to said $2,000.00 and said contract, but the same remains without prejudice, &c.

(Signed) W. R. CAIN, *Judge.*

STATE OF ARKANSAS,
County of Independance:

I, Reuben Harpham, clerk of the county court, and ex-officio clerk of the circuit court, within and for the county and State af*or*'said, do hereby certify that the within annexed and foregoing is a true, correct, and complete copy of said judgement in favor of John E. Womack and Thomas Welch vs. The Batesville Institute, as the

same appears in my office on circuit court record, Book F, pages 478 and 479.

In testimony whereof I set my hand and affix the seal of said court, at office, this 23rd day of March, A. D. 1869.

[L. S.] REUBEN HARPLAIN, *Clerk.*
By ROB'T A. C. BATES, *D. C.*

This is "Exhibit A," refer'ed to in my deposition.
REUBEN HARPHAM.

JOHN F. ALLEN, a witness known to me to be of lawful age, being to me at the same time and place af*or*'said produced, and being by me first sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit af*or*'said, did there and thee on his oath afor'said depose as follows, to wit:

I am acquainted with Calman Hirsch of the firm of M. Kaufman & Co., of New Orleans, and was acquainted with the firm of Hirsch & Adler, of Batesville, Arkansas. I also knew the contractors who built the Batesville Institute, John E. Womack and Thomas Welch. I was one of the directors of said institute, as I have been informed. I was present at a called meeting of the directors in 1868, at Byres & Co.' office in the town of Batesville. Those present were W'm Byres, president, E. R. McGuire, D. S. Fraly, Thomas Cox, and myself. The business before the directors was to secure to the stockholders in some way the amount which each had in the building, and it was finally agreed that the president should sell the institute to some one in order to attain that end. My understanding of the affair was that Hirsch and Adler held a mortgage or lein on the institute for a sum not far from ten thousand dollars, which sum was drawing interest. It was stated that they had held possession of the building since its completion, and received all the earnings of the house, and applied none of it towards liquidating the claim they held on the building, and the small stockholders would thus receive nothing. The directors upon this understanding ordered the president to sell it.

Cross-examined:

I recollect there was some conversation and discussion as to the rental value of the institute from its completion, but do not recol'ect the amount having been stated. I remember it was stated that the United States Government had paid a considerable sum as rents for different parts of the building, but know nothing of the amounts received, if any. I understood those rents had been paid to Hirsch & Adler while the Federal Army occupied this place.

Re-examined:

Do not know of my own knowledge that Hirsch and Adler received any pay as rent; only *only* heard it as a rumor.

Subscribed & sworn to before me 23rd March, 1869.
JOHN F. ALLEN.

Subscribed and sworn to before me o*f* the 24th day of March, 1869.
ELISH' BAXTER,
Register in Bankruptcy.

EDWIN R. MCGUIRE, a witness known to me to be of lawful age, being to me at the same time and place af*or*'said produced, and being by

me first sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit afor'said, did there and thee on his oath afor'said, depose as follows, to wit:

I am acquainted with Calmon Hirsch, one of the members of
224 the firm, M. Kaufman & Co. I am one of the directors of the Batesville Institute. Something over one year ago I was appointed by the circuit court to have such work and repairs done on the institute as would preserve the building from injury. In obedience to the order of the court, I had a new tin roof put on the institute. Had the glass put in the windows, and the repairs done will cost something like eight hundred dollars, may be more, may be less, as the person employed to put on the roof has not entirely finished it, and has not been settled with. The repairs are to be paid out of the rents. Hirsch and Adler have had possession of the building since its completion, and, as I understand, set up some kind of a claim to it. I was present at the time the directors authorized a sale of the institute. This was something over one year ago. Mr. Byers, Mr. Fraly, Dr. Allen,
225 Mr. Cox, and myself were present, composing the meeting. We authorized the president to sell the property, and my impression is that Mr. Cox made a proposition to give eight thousand dollars for the institute. The matter was discussed, and Mr. Cox' proposition finally accepted.

It was understood that Hirsch and Adler had a claim or set up a claim to the institute, and in order that the stockholders might realize something for their stock, the sale was made, as I understood it.

Cross-examined:

I think eight thousand dollars was a fare valuation for the institute at the time it was sold to Mr. Cox. When I speak of the completion of the building, I mean that Hirsch and Adler occupied it ever since it was occupied, without reference to whether it was ever completed.

226 Subscribed & sworn to before me this 23rd March, 1869.
E. R. McGUILL.

Subscribed and sworn to before me on the 25th day of March, 1869.
ELISHA BAXTER,
Register in Bankruptcy.

We agree that the above depositions may be read, waiving all irregularity, the right to except as to competency and relevancy only.
W'M BYERS,
THOMAS COX,
Defendants.

Opened and published per rule 69, the 1st day of June 1869.
CHA'S P. REDMOND, *Clerk.*

227 STATE OF ARKANSAS,
County of Independence:

Depositions of witnesses taken in behalf of the defendants in the case now pending in the U. S. court, wherein M. Kaughman & Co. are complainants, & the Batesville Institute & others are defendants.

On the 9th day of August, 1870, at the office of Byers & Cox, by consent, Messrs. Butler & Miller for complainants, & Byers & Cox for de-

fendants. At which time and place was produced M. E. WYCOUGH, a witness known to me to be of lawful age, after being duly sworn, deposes & says as follows, viz:

I have known the Batesville Institute ever since it was built. I have lived in Batesville ever since that time. I am a salesman in a dry-goods store, and have been for five years in this place. I know nothing of the rent of stores, except the one in which I am staying. I think they
228 have been paying four and five hundred dollars per annum. I would suppose that the two store-rooms & cellars in the institute would be worth five or six hundred dollars each per annum, that is, judging from the rent that Allen and McGuire are paying. I do not know what offices rent for, but would suppose that they would be worth fifteen or twenty dollars each. I mean taking all the rooms in the building, except the Masonic hall. Besides the store-rooms & Masonic hall, I think there are four rooms in the building, leaving out the Masonic and Odd-Fellows' hall. Simon Adler has been occupying one or the other of the store-rooms in the building ever since he returned after the war.

Cross-examined:

I heard Allen & McGuire talking about the rent they paid at the time Mark was talking of raising the rent, but do not now recollect the amount they said they payed; it was either four or five hundred
229 dollars. There is a room up-stairs that Allen & McGuire occupy; it is a half-story above the store, one side-room, one wareroom, and the office is in the side-room, and they have an iron room in addition. The store is a corner building, fronting the court-house. I consider it as good a stand as there is in town, but I think the institute as good a stand as it is. I do not know what any business house is rented for in town, except as above stated. I have been about the institute but very little since the war. I know nothing of its condition, except that it leaked. The estimate which I make of the store-room' is if they were in good repair. In one of the offices & the Masonic hall the plastering is nearly all off overhead; those are about the only rooms that I know much about. When I speak of the rent of the rooms in the 2nd story, I mean they, upon an average, I would suppose would be worth fifteen or twenty dollars each, though I do not know what offices rent for.

Re-examined:

230 Taking into consideration all the advantages every way, I should think a store-room with cellar in the institute ought to rent for more than the house now occupied by Allen & McGuire. I think I should much prefer it.

M. A. WYCOUGH.

Attest:
W. M. STEEL,
U. S. Commissioner.

And at the same time and place was produced DAVID S. FRALEY, a witness for the defence, known to me to be of lawful age, and after being duly sworn deposes and says as follows, to wit:

I have known the Batesville Institute ever since it was built. I have been here the principal part of the time since that time; during a portion of the war I was not here. I am carrying on a tin-shop, have stoves, sheet-iron, &c., & am trading generally. Hirsch and Adler occupied the institute as soon as it was built, or may be a little before it
231 was completed. I have been renting out property in Batesville

for near twenty years; have owned several houses, and do now own several. I should think in proportion to the way property is renting in Batesville, and the location of the building, rate of insurance, &c., thatthe Batesville Institute, the whole building, leaving out the Masonic hall, ought to rent for from sixteen to nineteen hundred dollars per annum. I have generally known the condition of the building; the roof was in bad repair for awhile. Taking in consideration the good and bad condition of the house, I should think that it ought to rent for fifteen hundred dollars a year, for the whole time. I know that it was occupied the most of the time. At any rate, when in bad condition, I think it would be worth that, taking it in the aggregate from the time that Hirsch & Adler first occupied it. Part of the time it could not probably have been rented at all, and a portion of the time it would have been worth more than that. I was here all the time from the time Curtiss left until Livingston came. They (Hirsch & Adler) controlled and
232 occupied the *the* building during that time. I do not know that they occupied the whole building, but they held possession of it, and some of them stayed there. Livingston's quartermaster oc'upied a portion of the building when he was here, and Aaron Hirsch was there generally doing a trading business; that was his headquarters; he was buying vouchers, &c.; he left here with Livingston's command, or about that time. I do not know whether the quartermaster paid any rent or not for that house. I do not know that Mr. Hirsch ever got any pay from Q. M. Thompson, of Livingston's command, for the rent of the institute; but I do know that Q. M. Thompson had an order from the chief Q. M., at Little Rock, to pay rents here on proof of loyalty, and that Q. M. Thompson paid me rent for two rooms oc'upied by Capt. Allen. The order was to pay rents generally on proof of loyalty, for I saw the order. Thompson paid me rent for two rooms for Capt'n Allen, and he paid me rent for a room for vet'renary surgeon, but the ballance he did
233 not pay. Soon after the surrender I partially repaired the roof, and about two years ago I put a new roof upon the building, and so far as leakage since that time, there has been nothing to amount to anything. Simon Adler has been occupying either one or the other of the store-rooms & cellars ever since he returned here after the surrender. I should think that one of the store-rooms and cellars would be worth five or six hundred dollars per annum, taking into consideration the amount of space both in store-rooms and cellars, in proportion to the way other buildings are renting in town.

Cross-examined:

From the time Curtis came here, business by the citizens was generally suspended, but while the Federal armies were here there was considerable demand for business houses by the sutlers who followed the army. I left here with Livingston's army, went as far as Devall's Bluff with them. I was at the Q. M. Thompson all the time, until we
234 parted at Devall's Bluff, to give me vouchers for my rents, and he promised to do so, but never did, except what I have stated he had paid me. When I returned here, a part of the roof, about one foot by two, in the southwest corner of the building, and the down-pipes from & the gutter were gone, which was after the war. At that time I should not think there was material in the country to repair the roof & the down-pipes. I own one store-house in town, situated on Main street, & has rooms above it.

During the war the rooms were generally occupied, up-stairs, frequently without my permission, and without being rented, but they

generally paid me rent, and I have generally, both before and since the war, refused to rent the rooms up-stairs on account of difference in insurance.

I have had numerous applications, which I have refused, to rent the upper rooms in my house. The plastering in the Odd-Fellows' hall overhead was principally off, and a good deal off in the town-hall overhead.

235 The southwest corner room in the institute was somewhat damaged in the corner from rain. A portion of the inside brick had crumbled down. The floor in the town-hall has swaged some. I do not myself consider the town-hall safe, nor never have. I think it ought to rent for twelve dollars and fifty cents per month, annually, and could be rented, one year with another, for that amount.

My understanding was, when the building was put up, that the town-hall was to be rented out for shows, public exhibitions, &c., and was to be used free by the citizens for public gatherings. I was a stockholder and director in the institute.

The room now occupied by the Episcopal church was intended for a public library room, but has never been used for that. The principal part of the damage to the building was on account of the leakage of the roof.

(Attest.) DAVID S. FRALEY.
W. M. STEEL, *U. S. Com'r.*

236 There not being sufficient time to close the taking of depositions herein, the same is closed by consent of counsel, Messrs. Butler & Miller for complainants, & Byers & Cox for defendants, until the 10th inst.

W. M. STEEL, *U. S. Com'r.*

H. F. Archer.

AUGUST 10*th*, 1870.

At 9 o'clock, as per agreement, present, Butler & Miller for complainants, Byers & Cox for defendants, at the law-office of Byers & Cox, at which time and place was produced H. F. ARCHER, who is know to me to be a witness of lawful age, and after being duly sworn, deposes and says as follows, to wit:

I am a merchant in Batesville. I have lived here a little over twenty years, all the time except during the war, and a part of that time. I have been engaged in the mercantile business. I have had some knowledge of rents during that time. I have been renting for nearly three years since the war. I have known the Batesville Institute ever since it was built. The two stores with stores attached I should think

237 worth five hundred dollars each, at least I would give that much & pay it monthly. I speak of the present value of them. The offices up-stairs, on the left, I think would be worth eight dollars a month, each; the two front offices, the room occupied by the Episcopal church, I think would be worth twelve dollars & fifty cents per month. The town-hall, taking both of the rooms in it since the partition is put in it, I think would be worth two hundred dollars per annum. The department occupied by the Odd-Fellows would be worth one hundred & twenty dollars per annum.

This is the present estimated value of the building, making in the aggregate sixteen hundred & sixty-two dollars.

I did business soon after the war for Mr. Coin, in the institute, in the

east store-room. I think he paid thirty dollars per month rent; he occupied it four or five months. The room leaked some, but not enough to amount to anything; another party oc'upied the other store-room at the same time; his name I do not now recollect.

I think a portion of the building has been oc'upied nearly all the time since the war; I think for one or two years since the war, on ac-
238 count of its leaking. I do not think it would have been more than half what it is now. I do not know what those store-rooms could have been rented for before the war.

Cross-examined:

I stayed with Mr. Coin for nearly five months in that building. The parties in the adjoining store-room left it a short time before Coin moved out.

Mr. Rushing was about the adjoining store in the institute, but I do not know whether he was interested in it or not, but I supposed he was. I do not think the room now occupied by the Episcopal church was occupied at the time Coin was in the institute. Nor do I think the town-hall was occupied at that time.

I don't think the Odd-Fellows' hall was oc'upied at that time *n*either. I think the offices were oc'upied, or a part of them, though I cannot state for certain.

I think Street & Martin moved in the store a short time after Coin left, though I do not now rec'ollect the time they moved in.
239 I don't recollect, but I think the other store was occupied at the time Street & Martin were there by the Federals for com'isaries, &c., but I would not state for certain. I do not know whether the town-hall has been rented since the war, except for the Republican printing-office and awhile by Col. Ketchums for a law-office, but for how long I cannot state.

The room now occupied by the Episcopal church has not been occupied since the war for any other purpose except for the church, that I know of. I do not expect they have ever paid any rent except what repairs they done on it. They plastered it & made other necessary repairs necessary to their occupancy, and paid for that. There w*as* about three years during the war that the merc*h*antile business was pretty much suspended. During the war I think both sides, both Federal' & confederates occupied the building at different times. My understanding is that Sherwood took the down-pipes off the institute and made them up into tin cups, cant*i*nes, &c. He sold them round
240 town, & furnished Shelby's or some other confederate command with some of them.

I do not know whether he belonged to any command or not. Mr. Addler about one year ago offered to rent me one of the store-rooms at forty dollars per month, and I refused to take it; including the cellar also. It was the west room.

I first offered him twenty dollars per month, and then I offered him twenty-five, & finally I offered him at the rate of four hundred dollars per annum. We did not agree, & I did not take it. He finally offered to take thirty-five dollars a month, but I rented the one I now have, & did not rent of him. At the time of the attempted trade one of the store-rooms was vacant. He did not make the proposition of thirty-five dollars until after I had made a proposition for the one I now oc'upy. When I speak of the rents of the stores, in my examination-in-chief, I mean they would be worth that if parties could have an understanding as to the length of time they could oc'upy them. I

241 would not rent them at all without an understanding as to how long I could oc'upy them, that is, for my own use, and move my stock.

I now occupy a brick store on the corner of Main & Spring street'. It has the main store-room, the office, one back room, & one side room, & the west front room up-stairs. There is a cellar under it, but not fit for use. I think that the store I am in is a longer room than the one in the institute, that is, the main store. The front room I think is longer than it is back to the arch in the institute. The store I now oc'upy is wider I think than either of the stores in the institute. The side room is 15 by 10 or 12 feet, I think; it may be more or less. The back room extends all the way across the back end of the building, 16 or 18 feet wide. The office is about the same size of the side room. The room up-stairs is fifty-five or sixty feet long, and about eight or ten feet wide. I think the cellar extends to the dimensions of the whole building. It is cut up in apartments. The stand suits me better than the institute would. For the first term that I rented the building I paid
242 twenty dollars a month, but I did not have the back room, and I rented it for a term less than one year. The next time I rented it for twenty-five dollars a month until such time as it was put in repair. It was in bad repair. The next contract I think was four hundred dollars, including the back room. The next contract was for five hundred dollars a year, including all the rooms I have named. And the parties from whom I rented were to put up shelving on one side and make some counters. That was the time my contract for five hundred dollars commenced, that is, after the work was completed. I was to pay five hundred dollars a year.

Re-examined:

I think the portion of the u'per rooms *were* occupied soon after Coine left. I do not know whether all of them were or not. On reflection I think the town-hall was occupied for a time for a school-room in addition to the times spoken of its being occupied as a printing-office and a law-office by Kitchens during the suspension of business. There
243 was considerable demand for houses at times by sutlers & refugees.

The cellars under the building that I occupy are not fit for anything, and are not in my contract, nor are they used by any one.

If I was commencing business in Batesville I would rather have the east store-room & cellar attached in the institute than any store in town.

H. F. ARCHER.

Attest:
W. M. STEEL, *U. S. Commissioner.*

F. D. Denton.

And at the same time and place also was produced FRANKLIN D. DENTON, to me well known to be a witness of lawful age, and after being duly sworn, deposes and says as follows, to wit:

I am now engaged in merchandising in Batesville.

I have been here nearly twenty-nine years. I have known the Batesville Institute ever since it was built.

I pay at the rate of three hundred dollars p'r annum for the
244 store in which I am doing business. I own an interest in it, but the rent is estimated at that amount. The rents of store-houses,

I believe, range from three to five hundred dollars per annum. I should think that either of the store-rooms in the institute, with cellars attached, would rent for four hundred dollars a year when kept in repair. I suppose they are in repair now from appearances, but they have been in very bad condition.

I should think the whole building ought to rent for twelve hundred dollars a year, leaving out the Masonic hall. The place where I am is the best stand, but the stores in the institute are the best.

Cross-examined:

The institute up to the time it was recovered was in a very bad, leaking condition. I would not have given four hundred dollars a year for either of the stores before they were repaired. I have been in there and seen them have to take their goods out of the shelves & pile
245 them up to keep them from getting wet when it was raining.

I would not have oc'upied them at all unless the parties owning them would have paid me for the damages sustained by leakage. The plastering some time ago was off overhead, both in the Masonic and Odd-Fellows' halls, and the floor in the town-hall is sunk down some.

My estimate of twelve hundred dollars is the building in its present condition since repaired.

I suppose a merchant could show more goods in a store in the institute than he could in mine, & make a better display—the sales-room being larger.

F. D. DENTON.

Attest:
W. M. STEEL, *U. S. Commissioner.*

A. W. Lyon.

And at the same time and place was produced AARON W. LYON, a witness, to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I have known the Batesville Institute ever since it was built.
246 I have been here nearly thirty-eight years. My business, for a number of years, has been that of a druggist. The two store-rooms, with the cellars attached, I think worth five hundred dollars each a year; five rooms up-stairs, exclusive of the Masonic hall, I should think, one hundred each.

Cross-examined:

I base this estimate upon the present condition of the building up to the time the building was recovered. I don't think a great many would have wanted to have gone into it. While it was in a leaking condition I would not have wanted it at all, and during that time I do not think it would have been worth what I have estimated it at in my examination-in-chief. It was rented a part of that time, but as to what amount it rented at I cannot say. I cannot say that the whole of the rooms in the building were occupied. I think, though, that both the store-rooms and a part of the up'er rooms were occupied. I cannot
247 say that they were occupied all the time the building was in that leaky condition.

I was here all the time during the war. Stores were kept up some time after Curtiss left Batesville, but as to how long I cannot state.

I know that some of the merchants auctioned of' their goods awhile after Curtis left here, and among them was Hirsch & Adler. I think

it was in 1862, but I do not now recollect for certain when Curtiss came in here. He occupied the institute, but upon what terms I do not know, and my recollection is that Livingston also occupied it. I know this that he occupied it both above & below, for I was there frequently. I do not know anything of the condition of the town-hall or the Masonic hall or the Odd-Fellows' hall.

Re-examined:

When the building was in a leaky condition, I mean I should not have wanted it for my business, nor do I think it would have been fit for general merchandise.

I cannot be positive as to whether Curtis occupied all the
248 house or not.

A. W. LYON.

Attest:
W. M. STEEL, *U. S. Commissioner.*

I. N. Reed.

And at the same time and place was produced I. N. REED, a witness to me known to be of lawful age, and after being duly sworn, deposes and says as follows, to wit:

I am merchandising in Batesville. I have been here for five years and over. I have some knowledge of rents in Batesville since I have been here.

I have known the Batesville Institute ever since I came to Batesville. I have frequently been in the building, and have known the general condition of it.

I think the store-rooms and cellars attached would be worth about four hundred dollars a year each, providing the roof was in good condition, that is to say, either of the store-rooms in good condition would be worth that. Since I came here one of the stores was occupied by Coin, and after he went out by Street & Martin; that is, some
249 time after Coin went out Street and Martin went in. I do not remember when the new roof was put on. I think it was two or three years ago—some two years anyhow. I cannot say it is in good condition at present, but I suppose it to be in pretty good condition.

I cannot state as to the value of the rooms up-stairs. I do not know what offices rent for.

Cross-examined:

At one time I was in there it was raining, and I should not have wanted to have occupied it at any price; but I believe it was then occupied; one room, I believe, by Simon Addler and the other for a com'issary department. This was shortly after the wind had blown the roof off. I do not recollect to have seen it in that condition but that time; it had the reputation of leaking after that time up to the time it was repaired.

Re-examined:

I think Simon Addler has occupied either one or the other of
250 the store-rooms ever since he returned here after the war.

ISAAC N. REED.

Attest:
W. M. STEEL, *U. S. Commissioner.*

There not being sufficient time to close the taking of depositions herein, the further taking of the same is hereby continued by consent

I believe, range from three to five hundred dollars per annum. I should think that either of the store-rooms in the institute, with cellars attached, would rent for four hundred dollars a year when kept in repair. I suppose they are in repair now from appearances, but they have been in very bad condition.

I should think the whole building ought to rent for twelve hundred dollars a year, leaving out the Masonic hall. The place where I am is the best stand, but the stores in the institute are the best.

Cross-examined:

The institute up to the time it was recovered was in a very bad, leaking condition. I would not have given four hundred dollars a year for either of the stores before they were repaired. I have been in there and seen them have to take their goods out of the shelves & pile
245 them up to keep them from getting wet when it was raining.

I would not have oc'upied them at all unless the parties owning them would have paid me for the damages sustained by leakage. The plastering some time ago was off overhead, both in the Masonic and Odd-Fellows' halls, and the floor in the town-hall is sunk down some.

My estimate of twelve hundred dollars is the building in its present condition since repaired.

I suppose a merchant could show more goods in a store in the institute than he could in mine, & make a better display—the sales-room being larger.

F. D. DENTON.

Attest:
W. M. STEEL, *U. S. Commissioner.*

A. W. Lyon.

And at the same time and place was produced AARON W. LYON, a witness, to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I have known the Batesville Institute ever since it was built.
246 I have been here nearly thirty-eight years. My business, for a number of years, has been that of a druggist. The two store-rooms, with the cellars attached, I think worth five hundred dollars each a year; five rooms up-stairs, exclusive of the Masonic hall, I should think, one hundred each.

Cross-examined:

I base this estimate upon the present condition of the building up to the time the building was recovered. I don't think a great many would have wanted to have gone into it. While it was in a leaking condition I would not have wanted it at all, and during that time I do not think it would have been worth what I have estimated it at in my examination-in-chief. It was rented a part of that time, but as to what amount it rented at I cannot say. I cannot say that the whole of the rooms in the building were occupied. I think, though, that both the store-rooms and a part of the up'er rooms were occupied. I cannot
247 say that they were occupied all the time the building was in that leaky condition.

I was here all the time during the war. Stores were kept up some time after Curtiss left Batesville, but as to how long I cannot state.

I know that some of the merchants auctioned of' their goods awhile after Curtis left here, and among them was Hirsch & Adler. I think

it was in 1862, but I do not now recollect for certain when Curtiss came in here. He oc'upied the institute, but upon what terms I do not know, and my recollection is that Livingston also occupied it. I know this that he occupied it both above & below, for I was there frequently. I do not know anything of the condition of the town-hall or the Masonic hall or the Odd-Fellows' hall.

Re-examined:

When the building was in a leaky condition, I mean I should not have wanted it for my business, nor do I think it would have been fit for general merchandise.

I cannot be positive as to whether Curtis occupied all the
248 house or not.

A. W. LYON.

Attest:
W. M. STEEL, *U. S. Commissioner.*

I. N. Reed.

And at the same time and place was produced I. N. REED, a witness to me known to be of lawful age, and after being duly sworn, deposes and says as follows, to wit:

I am merchandising in Batesville. I have been here for five years and over. I have some knowledge of rents in Batesville since I have been here.

I have known the Batesville Institute ever since I came to Batesville. I have frequently been in the building, and have known the general condition of it.

I think the store-rooms and cellars attached would be worth about four hundred dollars a year each, providing the roof was in good condition, that is to say, either of the store-rooms in good condition would be worth that. Since I came here one of the stores was occupied by Coin, and after he went out by Street & Martin; that is, some
249 time after Coin went out Street and Martin went in. I do not remember when the new roof was put on. I think it was two or three years ago—some two years anyhow. I cannot say it is in good condition at present, but I suppose it to be in pretty good condition.

I cannot state as to the value of the rooms up-stairs. I do not know what offices rent for.

Cross-examined:

At one time I was in there it was raining, and I should not have wanted to have occupied it at any price; but I believe it was then oc'upied; one room, I believe, by Simon Addler and the other for a com'is'ary department. This was shortly after the wind had blown the roof off. I do not recollect to have seen it in that condition but that time; it had the reputation of leaking after that time up to the time it was repaired.

Re-examined:

I think Simon Addler has occupied either one or the other of
250 the store-rooms ever since he returned here after the war.

ISAAC N. REED.

Attest:
W. M. STEEL, *U. S. Commissioner.*

There not being sufficient time to close the taking of depositions herein, the further taking of the same is hereby continued by consent

of council, Butler & Miller for complainants, and Byers & Cox for defence, until the 16 August, 1870.

W. M. STEEL,
U. S. Commissioner.

John Campbell.

August 16th, 1870, at 9 o'clock a. m., at the office of Byers & Cox, the further taking of depositions herein was resumed; attorneys present, Butler & Miller for complainants, Byers & Cox for defendants, at which time and place was produced JOHN CAMPBELL a witness to me *to be* well known to be of lawful age, and after being duly sworn, deposes and says as follows, to wit:

251 I have known the Batesville Institute building ever since it was erected; I put the first roof on the building for Womac & Welch; they were the contractors for the building. I have been well acquainted with the building most of the time from then until now. I have some knowledge of the rates of rents in Batesville both during and since the war. I have rented some myself. My opinion is, that the building, leaving out the Masonic hall, could have rented easily for eighteen hundred and twenty dollars p'r annum. The two store-rooms with cellars attached would have rented for four hundred each p'r annum—for office-rooms and hall on second floore at fifteen dollars each per month; the back hall on the third floore with the anty-rooms belonging to it worth (10) ten dollars per month, making a total of eighteen hundred and twenty dollars. Some of these apartments have sometimes rented for more than that; at other times less, and at other times they have been vacant. I was living there when Livingston's command were in Batesville. I paid Mr. Burr fifty dollars per month for a store-room at the time Livingston was here. My

252 recollection is that the institute was occupied; one store-room by Hirsch & Addler, and the bal' of the building I think was occupied by the Quartermaster's Department, offices, &c. Mr. Hirsch did not occupy more than one store and the cellars or basement or a part of the basement; the ballance of the building was given up to Col. Livingston's command for Q. M. Department, offices, &c. Mr. Hirsch used the basement for storeing cotton. I had business with Mr. Hirsch; he stored some cotton for me, and whenever I was in the basement it appeared to be pretty much full of cotton. I do not know whether Livingston's command ever paid any rent for the institute or not; it was their habit to pay rents upon proof of loyalty, but whether they paid Hirsch or not I have no knowledge. I think Mr. Hirsch was considered at that time a loyal man, and was so regarded by Col. Livingston and the officers of the Army. I have no knowledge of Mr. Hirsch being connected with Livingston's quartermaster in business, but their relations were friendly and intimate.

253 In my estimate of the rent of the building I have made an estimate of it in its actual condition all the time since occupied by Messrs. Hirsch & Adler, and the demand for rooms and the condition of business in Batesville during the time.

Cross-examined:

I live nine miles from town at present. I quit business in Batesville three years ago. I married the wid'ow of Thomas Welch, one of the original contractors for the institute. I am the guardian of William Welch and Thomas Welch, the children of Thomas Welch, deceased.

The large room on the second floor, known as the town-hall, has, to my knowledge, been oc'upied at intervals since the war; at one time by the surgeon of the military command at this post, then as a printing-office, & again as a school-house, &c. I have not much idea how long it was oc'upied by the surgeon; Syler & McCanany oc'upied it as printers, but

I cannot state the length of time, nor how long the school was kept
254 in it; at that time I was living in the country; for a year or two since the war, and during the time it was oc'upied by the quartermaster of the post, I think the hall was in its worst condition, leaking, &c. I do not know the condition of the town-hall at present, nor whether it is regarded as safe by the public or not. In 1867 & '68 the building was very much out of repair, and may have prevented two of the halls from being rented; the ballance of the building was oc'upied at that time—the town and Odd-Fellows' are the ones I refer to as being unoc-'upied; the post quartermaster oc'upied one of the store-rooms below and a part of the basement, and Mr. Simon Adler the other store-room & basement. I commenced business in Batesville spring of 1864, and have done more or less business since up to 1867. I think Livingston left Batesville in May, 1864. I was absent from the time he left for about one year. I think Hirsch & Addler had few or no goods when

Livingston was here. I think their transactions were confined
255 to buying cotton and supplies for the Army. I considered the storing of cotton by Mr. Hirsch as a strictly business matter, but cannot state certainly that I paid him for storage, but I suppose I paid him, as I was in the habit of, for everything in a business way which he did for me.

Re-examined:

The bad condition of the building in 1867 & '68, made the necessity of the repairs which were put on the latter part of 1868. I think the building has been considered in good repair since the new roof was put on.

Attest: JOHN CAMPBELL.

W. M. STEEL, *U. S. Com'r.*

W. M. Aikin.

And at the same time and place was produced WILLIAM M. AIKIN a witness known to me to be of lawful age, and after being duly sworn deposes and says as follows, to wit:

I have been living in Batesville since 1862. I have known the
256 Batesville Institute building all the . I have not been in any mercantile business in Batesville since that time, but I have some knowledge of rents. I should think each store, with cellar attached, in the institute, would be worth fifty dollars a month; the library-room, now oc'upied by the Episcopal church, would be worth seventy-five dollars a year; the offices on the same floor with the library-room, I think worth fifty dollars a year each; the town & Odd-Fellows' hall' I think worth one hundred dollars a year each, making a total of sixteen hundred and twenty-five dollars, saying there are three offices.

Cross-examined:

I do not know of my own knowledge that there are three offices, but I know that there are two. I have been in the building often, but do not recollect positively the number of offices; for I had never thought of being examined upon the subject, and I never counted them. I am

in the employ of W. E. & L. S. Lancaster, merchants at Sylamour, in Izard County. I have been in business at Sylamour since
257 October, 1868. I first went to Sylamour in 1841. I was absent three years in California, and I moved to Batesville 1862, and my family have resided here ever since. I claim this as my home. The roof of the institute was in bad repair since the war, up to the time the new roof was put on. I do not recollect when that was. I know that the store-rooms have been oc'upied most of the time since the war by men doing business. There has been a part of the time that one or the other of the rooms were unoccupied during the time that the building was in bad repair. It would not have been worth as much as in good repair; but the scarcity of business houses and the demand for them, I think, would counterbalance the bad condition of the stores. There has been two small store-houses burnt up since the war, in Batesville, and one grocery house, (or liquor shop,) in the year' '65 & '66. There were two store-houses unoc'upied, but they were not in condition to be oc'upied. I cannot say that I know certainly what any merchant in Batesville was paying rent in 1865, '66, or '67. I do not 'now positively
258 what any merchant paid rent in 1868, '69, or 1870, but my estimate of the rent of the institute is from my knowledge of business generally. I have never rented a store-house in Batesville for myself, nor have I ever been engaged in business in Batesville. I rented the store now occupied by F. D. Denton for Berry & Ford, and they were to pay forty dollars per month, to be expended in the way of repairs. That was, I think, in the early part of 1866.

Re-examined:

The business houses which were unoc'upied were not in what I regard the business part of town. My recollection is that Simon Addler has been oc'upying a portion of the building continuously since he returned here after the war.

Attest: W'M M. AIKIN.

W. M. STEEL, *U. S. Com'r.*

Byers.

And at the same time and place was produced Judge WILLIAM
259 BYERS, known to me to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I was once president of the corporation known as the Batesville Institute, and am yet.

The building was closed in the winter of 1859 & 1860, and the store-rooms finished up. Porter & Cook oc'upied one of the store-rooms, & William Graham the other; they went in in the early part of the year 1860. I do not know to whom they paid rent, nor do I know the amount they paid. I think I had a correct knowledge of rents at that time, as I was interested in several business houses or store-rooms at that time. At that time I think twelve hundred dollars per annum for the two store-rooms & two cellars would have been a reasonable rent, that is, for the years 1860, '61, & '62; they were then in good repair, and well finished up.

At the March term of the court of 1861, Hirsch & Addler, Womac & Welch, and myself, in behalf of the Batesville Institute, made an arrangement whereby they went into the house; which terms
260 were that Womac & Welch were owing Hirsch & Addler, and the Batesville Institute were owing Womac & Welch for the

building of the house, and it was agreed between the parties that Hirsch and Addler should have the controll of the building, and the rents and profits, all except the Masonic hall, and the rooms pertaining to the Masonic hall, from the 1st day of January, 1861, untill Womac & Welch were paid, or untill the said Hirsch & Addler were paid what Womac & Welch owed them, or untill the house should be sold or otherwise disposed of; there was a proceeding in the court then to enforce mechanics' lien.

It was further agreed by Hirsch & Addler that while they should have controll of the building they would take good care of it, and keep it in good repair, and that they would pay or credit Womac & Welch, upon that indebtedness, what the rent of the building was reasonably worth, and Womac & Welch were to credit the Batesville Institute for the same on what the Batesville Institute owed them. I think

261 Hirsch & Addler moved into the building in the spring or *of* summer of 1861. And they, or those under them, have had controll of it from the 1st of January, 1861, up to the present. I think I have known the condition of the building all the time, since they took possession or controll of it. I think an average rent for the building for the whole time since Hirsch & Addler took controll of it, taking into consideration its condition, the war, *and* &c., would be about eighteen or nineteen hundred dollars a year.

Cross-examined:

The date of the judgement upon the mechanics' lein was in March, 1861. I think I left here and went over upon the Arkansas River, 1862, in November, and returned in October, 1863, and was to & fro in the mean time frequently, say three or four times, and I was here at home during the month of August, 1863. Mercantile business was partially suspended in faul of 1863. On Christmas day of 1863, Livingston's army arrived here, and then business revived, and business became quite brisk. Stores came in with the Federal army, and others here that got permits.

262 I do not think the approach of Gen'l Curtis' army suspended business, and business was not suspended untill the faul of 1863. Hirsch & Addler sold a part of their dry-goods at auction, in 1863; that is my information. Some time in the faul of 1863 the roof leaked badly, and may be in some places it leaked some little before that time. I think it was in the faul of 1863 some one cut a hole in the roof, and took off the tin for three or four feet square, and also took off the down-pipes, and after that it was repaired, but still continued to leak. I do not think it was very long after the hole was cut that it was repaired, and after it was repaired the roof still continued to leak in places near the back wall; I think the tin had drawn off from the wall, but it did not leak so badly but that it could have been occupied except the Odd-Fellows' hall; it leaked so badly that I do not think it would have been fit to oc'upy for awhile. It may have been a year that the Odd-

263 Fellows' was not fit to oc'upy, and I think in very heavy rains the water would seap down through into the town-hall.

In 1865, at the close of the war, I think it some, but not enough to prevent it be' oc'upied generally. I went to them as president and representative of the institute, and requested them to have it repaired. They refused to do it. After that, the corporation of the Batesville Institute sold the house to Thomas Cox, and he went and demanded the possession of the property. They refused to give it, and would not repair it until Mr. Cox filed his petition, in the circuit court of Independence County,

for a receiver to be appointed. The court appointed Edwin R. McGuire, receiver, and the new roof and repairs that were made were made under his directions and supervision; and the court ordered that the repairs be paid out of the rents that might accrue. In 1865 the roof leaked some, and it gradually got worse until the repairs were made in 1868, so much so, that the house was injuring seriously. I suppose the building could have been rented from 1865 to 1868, for an average of what I have stated. I am satisfied if I had had control of it I could
264 have rented it for that amount. I applied to Simon Addler to have the house repaired; he was the man who was in possession, and assumed the control of the building at that time. I spoke to Simon Addler at various times about having the repairs done, and at one time he told me that he had engaged Mr. Gorsuch, or that Gorsuch was at work on the house. I do not know which. I think it was some kind of felt roofing, but whether he was to cover the whole building or not I do not know.

Re-examined:

My recollection is that Hirsch & Addler, Smith, Case, Burr, Maxfield, and others, were engaged in business at the time Curtis' army was here, and continued in business afterwards for some time.

W. BYERS.

Attest:
W. M. STEEL, *U. S. Com'r.*

Henry C. Smith.

And at the same time and place was produced HENRY C.
265 SMITH, a witness to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I was merchandising in Batesville previous to the war, and did business up to August, 1862. I rented a business house in which to do business during that time; and since the war I have been renting out a store-house to others, or at least I rented up to a short time ago, when I sold the building. It was a brick store, opposite the Exchange Hotel; the one now oc'upied by H. F. Archer. Before I repaired the roof of the building I got at the rate of three hundred dollars per annum; think it was from August to October; and after that time, until the end of the year, I got at the rate of four hundred dollars p'r annum; and after that time I got five hundred dollars p'r annum. I should think the stores with cellars attached *I should think* ought to rent for as much each as the store now oc'upied by Archer. I put the room above that Mr. Archer gets to balance the cellar in the institute. I cannot
266 make an estimate of what the rents of the upper rooms in the institute should be.

Cross-examined:

I closed my mercantile business about the 1st of September, 1862, and I rather think that mercantile business was suspended in Batesville about that time generally. I auctioned off some goods before that time, and it is very probable that Hirsch & Addler did also. I cannot state from personal knowledge that I know that the institute leaked. I think that it had the reputation of leaking; from my general information the building leaked; my estimate of the rent of the store-rooms in the institute is supposing them in good repair. The five hundred dollars for rent of the store was from 1st October, 1869, up to the 1st October, 1870; prior to that time I had been receiving, as before stated, at the rate

of four hundred and at the rate of three hundred dollars p'r annum. On one side of the store I put in new shelving and counters, or tables,
267 when the rent was increased to five hundred dollars p'r annum.

Re-examined:

At the time I rented the house for three hundred dollars per annum the building leaked. I have known of Archer having to take down goods out of the shelves to keep them from getting wet, and pile them up on the counter.

Attest: H. C. SMITH.
W. M. STEEL, *U. S. Com'r.*

C. H. Wood.

And at the same time and place was produced C. H. WOOD, a witness to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I am a citizen of Batesville, and am acquainted with the building known as the Batesville Institute. I think the building—leaving out the Masonic hall—ought to rent for about fifteen hundred dollars per annum; five hundred dollars each for the stores and cellars attached, three hundred dollars for the offices and the church-room per an-
268 num, and two hundred for the town-hall. I do not know anything about the Odd-Fellows' hall; I have never been in it. I saw the building 1st in May, 1863. I think I have made this place my home since 1865. It is only recently that I have known what was asked for rents and what was paid for them.

Cross-examined:

I think those store-rooms could have been rented for five hundred dollars each a year, from the time Coin occupied one of the stores. I do not know what the stores in the institute rent for, nor do I know certainly what any one in town pays for certain, for I have never seen any of their contracts, but from what I understand dif'erent parties pay rents, I think that those stores ought to rent for five hundred dollars a year. I think I could rent them for that if they were mine. I have been doing business in Jacksonport during the past year.

Attest: CARROLL H. WOODS.
W. M. STEEL, *U. S. Com'r.*

269 BATESVILLE, ARK'S, *Sept. 17th*, 1870.

It is hereby agreed that all the depositions in the case of M. Kaughman & Co. vs. Batesville Institute et al., hereto attached, be used as the evidence in the case, waiving commission, &c., excepting only to rel'vancy & compe'ncy.

BUTLER & MILLER,
For Pl'ffs.
THO'S COX, *for Defend's.*

Opened & published by rule of court and agreement of council, Sep. 21st, 1870.

CHA'S P. REDMOND, *Clerk.*

270 In the circuit court of the United States for the eastern district of Arkansas.

M. KAUFFMAN & CO.
vs.
BATESVILLE INSTITUTE, THOMAS COX, ET AL.

Depositions of witnesses taken by concent, wa'ving notice and com-

mission, and any all all irregularities as to time, &c. No exception to be taken to any of them, except as to irrel'ancy and competency, and to be re'd, by consent on the part of the defendant, in the above-entitled cause, at the hearing of the same in the said circuit court of the United States for the eastern district of Arkansas.

BUTLER & MILLER,
Sol'rs for M. Kaufman & Co.
BYERS & COX, *for Def'd's.*

271 DAVID S. FRALEY, a witness known to me *and* to be of lawful age, being to me at the time and place aforesaid produced, and being by me duly sworn, according to law, that the evidence which he should give relative to the matters in controversy in the suit should be the truth, the whole truth, and nothing but the truth, did then and there, on his oath aforesaid, depose as follows, to wit:

I reside in Batesville, and have been a citizen of Independance County for many years. I am a mechanic, and am engaged in and carrying on or superintending the tinning and cop'er-smith business. I have paid considerable attention to the subject of mechanics and house-building. I was acquainted with Aaron Herch and Israel H. Adler, who formerly did business as merchants in Batesville, under the firm-name and style of Hirsch & Adler; also, with John E. Womack and Thomas Welch, carpenters and joiners, and partners as carpenters & house-joiners and builders; also, with Calman Hirsch, one of the complainants, and Thomas Cox, one of the defendants; also, with William Byers,
272 president of the Batesville Institute. I also know that the corporation known as the Batesville Institute entered into a contract with the said John E. Womac and Thomas Welsh, partners and builders as aforesaid, whereby the said Womack & Welch bound themselves to build a house, of a certain size and description mentioned in said contract, for the said Batesville Institute, and for the building and completion of said house by the time and in the manner set forth in said contract the Batesville promised and bound itself to pay the said Womac & Welsh certain sums of money at the times and manner in said contract mentioned; which contract was reduced to writing and signed by William Byers, as president of the Batesville Institute, for and in behalf of the said corporation, and by the said John E. Womac and Thomas Welch; and which contract so reduced to writing and signed by the parties aforesaid is now produced to me by the attorney of the said John E. Womac, it being the same contract referred to in the
273 deposition of William Byers, taken in this case, and made a part of said deposition; and which contract I also make a part of this my deposition. I am acquainted with the handwriting of William Byers, and also of John E. Womac and Thomas Welch each, and their several signatures to said contract are, respectively, their genuine signatures. The said Womac & Welch commenced the building of said house under said contract and progressed with the same until the fall of 1860. They erected the walls and completed a considerable portion of the house; but the roof which they put on said house was defective and leaked, and did not properly protect the walls, and, in consequence of the house not being finished and the roof being defective, the water ran down the walls on the inside thereof and caused a great quantity of the plastering to fall of', and the walls being wet on the inside during winter, they would frieze, and when they would thaw the brick would scale off, and in places to the thickness of a brick and more, so much so that in places the wall is greatly weakened, and,

274 in my opinion, can never be repaired so that it will be as strong as when first put up. Portions of timber, about the roof and other parts of the building have been injured by being wet, and the house is greatly damaged. I have put a new tin roof upon said house during the past summer, under the direction of Edwin R. McGuire, esq'r, receiver in chancery, and have had good opportunity to see and know the extent of the damage done to said house by its not having a good roof thereon and from the neglect and carelessness of those who have occupied said house since the year A. D. 1860. And I was called upon in behalf of the said John E. Womack, surviving partner of the late firm of Womac & Welch, and the Batesville Institute in connection with Messers. Samuel B. Wycough and David C. Montgomery, to view and examine the said building, and to estimate the damage done to said building in consequence of its not having been completed according to contract and not having a good roof, and by the neglect, carelessness, &
275 abuse of those who have occupied it, and, after an examination, we were each of the opinion that the house had been damaged from the causes aforesaid at least to the sum of five thousand dollars; and I believe that it would have taken at least that sum (before I put a new roof upon it) to put in good repair, and then it would not be so good or equal to what it would have been if it had been completed according to the contract aforesaid. The house was greatly injured. I have been in Batesville nearly all the time since 1860—since the house known as the Batesville Institute was occupied by Messers. Hirsch & Adler, and know about what the house has been rented for a part of the time. During the war it was rented to the United States, and rented for a good price. Since 1860 up to the close of the war I think the rents of the house *was* worth one thousand (1,000$) dollars per year, and could have been made available at that price; and since the close of the
276 war, up to the present time, I think the rents have been worth fifteen hundred (1,500$) dollars per year, and could have been made available for that sum.

X-exam'd:

The corporate authorities never received the house. I contended, as one of the directors, that the house never was completed according to contract. If the house ever was received, I never heard of it. It was the general understanding that the house would not be received. I don't know w'ether Womac & Welch ever *was* released from the contract. If they ever *was*, it was without my consent. I don't know w'ether there ever *ever* was any suit on the contract or not. A good deal of the business was done in my absence. I don't know w'ether Womac & Welch filed a lien on the house or not; if so, it was not brought before the board when I was present, neither do I know anything about Womac & Welsh giving a deed of trust on the building to receive money
277 from Hirch & Adler only from hearsay. Of my own knowledge I do not know that Hirch & Adler furnished Womac & Welsh money or supplies to carry on the building. I know nothing of Hirch & Adler setting up a claim to the building only from what I have heard, and don't know how they got possession of the building. I think they took possession of the building either in the year 1860 or '61. Business was not kept up all the time during the war—was not entirely suspended, but very much interrupted. The United States troops first came to Batesville in May, 1862, and they occupied a portion of said building—how much I do not know. I do not know whether they paid Hirch & Adler rents or not. I only judge from them paying me. I also think

the confederate authorities also occupied a part of said building; can't say w'ether they payed or not. The first repairs done on the building since the war I did myself. I put some spouts to the house, &
278 mended one of the valleys. This was in 1865 or '66. I was employed to do this work by Aaron Hirch, then in New Orleans. He wrote and got me to do the work. He got me to make an estimate what the necessary repairs was to secure the house, and he would not have the work done at the estimate. He only had the above work done to turn the heavy drafts of the water off. At the same time I think one-third of the water that fell on the roof was running through down in the house. Simon Adler also got Mr. Goseeches to work on the roof.

Re-examined:

The work that Mr. Goseeches did on the roof was no benefit to the house. Mr. Gorseeches is a cabinet-maker & agent for patent roofing.

DAVID S. FRALEY.

Sworn to & subscribed before me this 23rd day of March, A. D. 1869.

ELISHA BAXTER,
Register in Bankruptcy.

279 SAMUEL B. WYCOUGH, a witness known to me *and* to be of lawful age, being to me produced as a witness on the part of John E. Womac, one of the defendants in this suit, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, upon his oath aforesaid, deposed as follows, to wit: I have resided in this country for more than twenty years. I was acquainted with Aaron Hirsch & Israel H. Adler, late merchants, and partners, who did business by the firm-name and style of Hirsch & Adler; also with John E. Womac & Thomas Welch, who were formerly in partnership in the carpenter & joiner and building business; also with Thomas Cox, and also with Colman Hirsch who I am informed is one of the complainants in this suit. I am a carpenter and house-joiner by trade or occupation, and have followed that business for many years. I am also acquainted with the building in the town of Batesville, Independence County,
280 Arkansas, which was built by the said Womac & Welch for a corporation known as the Batesville Institute. The said building was never completed by the said Womack & Welsh according to their contract, and the roof which they put on said building was very defective, and *that* the walls and other parts of the building *has* sustained great damage and injury in consequence of the leakage and other defects in the roof. I have worked on the building in repairing it within the past year, and was called upon in connection with David C. Montgomery and David S. Fraley, by E. R. McGuire, who had been appointed a receiver in chancery to collect rents and apply the same to the repairing of said house, and we carefully examined the house and made an estimate of the actual damage the said house had sustained in consequence of not having been finished according to the contract, and we examined the same as mechanics and experts in such matters, and were of the opinion that the building had been damaged to at least the amount of five thousand dollars. Some of the brick walls were greatly injured, some of the timbers decayed or decaying, and the plas-
281 ter of the third story very nearly all off, and greatly damaged in other parts of the building.

We believed that it would take at least the sum of five thousand dol

lars to put the said house in good repair, or to repair the damage which the house had sustained in consequence of its not having been finished in accordance with the terms of the contract between the said Womac & Welch and the Batesville Institute, and in consequence of those who had the possession of said house not making the necessary repairs to protect the building.

X-exam'd:

I can't say whether the Batesville Institute ever was received or not. I was not one of the directors.

A part of the time there was a stagnation of all business, such as building and the like, during the war, and *that* business and property *was* generally neglected. Mr. Simon Adler since the war had some work done on the roof of the building. Adler was in possession of the building at the time, he also had a *pe*tition run across one of the
282 rooms. Mr. Montgomery and myself did the last job. The repairs on the roof *was* just a pa'ching the old roof & some slight change in the val'*ies*. I think the repa*re* above spoken of was in 1865. I did no other work on the building till I was employed by Mr. McGuire, who was acting under the orders of the court, as I understood it.

S. B. WYCOUGH.

Sworn to & subscribed before me this 22d day of March, A. D. 1869.

ELISHA BAXTER,
Register in Bankruptcy.

283 And at the same time and place DAVID C. MONTGOMERY, a witness in behalf of John E. Womac, one of the defendants to this suit, being to me produced, and being by me sworn according to law that the testimony which he would give in the suit aforesaid as to the matters in controversy in said suit should be the truth, the whole truth, and nothing but the truth, did then and there, on his oath aforesaid, depose as follows, to wit:

I have lived in this (Independence) county for many years. I am a carpenter and house-joiner by trade, and have followed that business for many years in Batesville and this part of the country. I was acquainted with Aaron Hersch & Israel H. Adler, who formerly did business as merchants in the town of Batesville, Arkansas, by the firm-name and description of Hersch & Adler: also with John E. Womac and Thomas Welch, who formerly carried on the business of carpenters & house-joiners & builders as partners in the town of Batesville. I was
284 also acquainted with Calman Hirsch, who, I am informed, is one of the complainants in this suit. He was at one time engaged in the mercantile business in Batesville, but I am informed that he now resides in New Orleaas, La. He was a brother of the said Aaron Hirsch. I am also acquainted with Thomas Cox, esq'r, who, I am informed, is a defendant in this suit. I also know the large brick building in Batesville which is generally called or known by the name of the "Batesville Institute," and that the same was built by John E. Womac and Thomas Welch aforesaid, for a corporation known as the Batesville Institute. The building was never entirely completed, and the roof of said building was very defective, and the house was greatly injured in consequence thereof. I was called upon as a mechanic and expert in such matters, in connection with Samuel B. Wycough and David S. Fraley, to view the house, and estimate the damage it had sustained in consequence of its having a bad roof, and not having been com-

pleted in a good and workmanlike manner, &c. I, in connection
285 with those gentlemen, examined the house carefully, and we were all of the opinion that it had been damaged to at least the sum of five thousand dollars. I had a good opportunity to learn the extent of the damage, as I had been employed in the summer of A. D. 1868 in taking the old roof off, and preparing it for a new tin roof. The walls of the house are so greatly injured in places that I doubt w'ether they can be repaired so as to make them good and substantial. In consequence of the leakage, a great part of the plastering of the house has fallen off, the walls defaced and injured, and the house otherwise greatly damaged. I feel confident that it has, by the damage it has thus sustained, diminished in value at least five thousand dollars, and that it could not have been put in good repair for a less sum than five thousand dollars.

286 X-exam'd:

Messrs. Wycough, Fraley, & myself was called on some month or six weeks ago to make an estimate of the damages to the house. This was the time spoken of in my deposition-in-chief. This was the only time that I made an estimate of the damages done the building. When Mr. McGuire called on us, we only examined the building to see what work was necessary to be done, and repair the roof. I know there was some work on the vall*ies*, and Mr. Gorsuches done some patching in the val*'ies*. I think this was done in 1867. Mr. Gorsuches employed Mr. Wycouch & myself to do what we did. Simon Adler was in possession of the building at the time; was in the house doing business.

Re-examined:

I think that the repairs that Mr. Gorsuches did on the roof proved a fail*er*. Don't think *it* did much good, if any. I think it leaked
287 about as bad afterwards as it did before.

D. C. MONTGOMERY.

Sworn to & subscribed before me this 22d day of March, 1869.

ELISHA BAXTER,
Register in Bankruptcy.

288 WILLIAM BYERS, a witness of lawful age, being first duly sworn according to law, deposeth and saith as follows, to wit:

I reside in Batesville, Arkansas. I was acquainted with Aaron Hirsch and Israel H. Adler, who were merchants and partners doing business in the town of Batesville, Arkansas, by the firm name and style of Hirsch and Adler. Also with John E. Womac and Thomas Welch, partners in the business of building, &c. Also with Calman Hirsch, one of the complainants in this suit. I have been president of the corporation known as the Batesville Institute from its first organization to the present time. On or about the 21st day of March, 1859, the said corporation, known as the Batesville Institute, entered into a con-
289 tract with the said John E. Womac and Thomas Welch, whereby the said Womac & Welch bound themselves to build a house for the Batesville Institute, of certain dimensions and description in said contract mentioned. For the furnishing all the material and the erection and completion of said building, the said Batesville Institute bound itself to pay the said Womac & Welch the sum of sixteen thousand eight hundred dollars, as follows, to wit, fifteen hundred dollars on the first day of May, A. D. 1859; fifteen hundred dollars on the first day of

November, A. D. 1859, and two thousand dollars on the first day of May, 1860, and the residue, say eleven thousand eight hundred dollars, when the said building should be completed and the keys thereof delivered to the said Batesville Institute. The materials for said building were all to be of good quality, and the work executed in a neat, substantial, and workmanlike manner, and the building was to be completed and the keys delivered to the Batesville Institute by the fifteenth day of March, A. D. 1861. The said contract was reduced to writing and executed in duplicate, one of which was retained by the Batesville Institute,
290 and the other was delivered to the said Womac and Welch. The one retained by the Batesville Institute is now in my custody and possession, and which contract I mark as Exhibit "A," attached to this deposition, and make it a part thereof, and to which written contract I refer for greater certainty of all its contents.

And to secure the faithful performance of said contract on the part of the said Womac and Welch, the said Womac & Welch, as principals, and William W. Lewis, William A. Bevans, James W. Butler, John A. Price, and Henry Neil, as their securities, executed and delivered their bond to the Batesville Institute, in the sum of ten thousand dollars, of the same date of said contract, which bond so made and delivered to the Batesville Institute is now in my custody, and I mark the same as Exhibit "B," and now attach the same to this deposition and make the same a part hereof; and to which original bond I hereby make
291 refferance for greater certainty of its contents.

The said Womac and Welch progressed in the erection and completion of said house until, in the fall of the year, A. D. 1860, they stop'ed work upon the house and informed me that they could not proceed farther with the work without obtaining aid from some source, and stated to me, as president of the Batesville Institute, that they had, in the year A. D. 1859, made an arrangement with the said Hirsch & Adler, whereby the said Hirsch and Adler had promised them to make all necessary advances to them to enable them to complete said building according to their contract with the Batesville Institute, and that for the purpose of securing the said Hirsch and Adler in the payment for all advances which they might make, they, the said Womac & Welch, had given liens, mortgages, or deeds of trust upon their several homesteads, and on very nearly all the property which they severally owned; and that the said Hirsch & Adler then, (say in
292 December, A. D. 1860) refused to make further advances to them to enable them to complete the building, and they each manifested great uneasiness about the matter. They said they were afraid that Hirsch & Adler might sell and sacrifice their homesteads and other property upon which they had some kind of a lien to secure the payment of advances which they had made to the said Womac & Welch. About this time the said Womack & Welch frequently spoke to me about the matter, and they finally told me that Hirsch and Adler had informed them that if they would file their account against the Batesville Institute and obtain a mechanics' lien in their favor as builders upon the building, and would give them the control of such lien, they would make all necessary advances to enable them to complete said building according to their contract. And on or about the 15th day of January, A. D. 1861, the said Womac & Welch filed their account
293 in the office of the clerk of the circuit court of Independence County, State of Arkansas, against the Batesville Institute for all material furnished and work done upon said house up to that time, for the purpose of securing a mechanics' lien thereon. And such pro-

ceedings were afterwards had that, on or about the 21st day of March, 1861, a judgment was rendered ( ) in the circuit court of Independence County aforesaid in favor of the said Womac & Welch and against the Batesville Institute by the consent of the parties; but the amount of that judgment was not then due the said Womac & Welch, and it was intended by all the parties only to give a lien on said house to secure the payment of whatever amount might be found due the said Womac & Welch from the Batesville Institute upon a fair settlement, after the building should be completed. I, in that matter, as president of the Batesville Institute, acted for and in behalf of the Batesville Institute; and on the part of the Batesville Institute
294 this deponent at first refused to let judgment go against the institute; but the said Womac & Welch insisted that I should prevent judgment to go; that, by my so doing, Hirsch & Adler would have Mr. Gibbs, the trustee, convey their several homesteads and other property to their respective wives, and that Hirsch & Adler would make all necessary advances to enable them to complete the building without delay. Before I would consent to let said judgment go I saw Mess's Hirsch & Adler, and they insisted that I should let judgment go then, and give Womac & Welch a lien on the building to receive what might be found due them when the building was completed, which would fully secure the said Hirsch & Adler in the payment of all the said Womac & Welch then owed them, and for all advances which they might thereafter make to enable the said Womac & Welch to complete the building without delay, according to the contract, and that it would enable them to secure to these families their respective homestead'. I pointed out to
295 them that the building was not completed, and that the money was not due then, and that the letting the judgment go might waive the rights of the institute under the contract, and that a full settlement had not been made up to that date between the said Womac & Welch and the Batesville Institute, and that probably something might happen to prevent the said Womac & Welch finishing said house, in which case there would be nothing due them. Womac & Welch and Hirsch and Adler stated that if I would consent that judgement should go for a sum sufficient to cover what might be found due, that it should only have effect and be a lien for what might be found due after the building was completed, and that it should not waive any rights which the institute had under the contract. And the said Aaron Hirsch, in behalf of the said Hirsch & Adler, promised me, as president of the institute, that they would advance all which might be necessary to enable the said Womac & Welch to finish said building without
296 delay, according to the contract, and they would see that they did complete the building without delay; and if they, Womac & Welch, did not do this, they, Hirsch & Adler, would have it done; and upon these terms I consented that said judgment might be rendered.

This deponent farther states that Womac and Welch never did complete the building; and that the said Hirsch and Adler never did complete the building; and that the said Womac and Welch were paid the first, second, and third payments in said contract mentioned by the Batesville Institute; and that they were paid about two thousand dollars that I know of on the last payment, viz, one thousand dollars, which I paid Hirsch & Adler for the said Womac & Welch, and about one thousand dollars for flour, meal, &c., which I let them have from the Valley Mills while they were at work at said house, and which, by agreement between the said Womac & Welch and this deponent, was to be in part payment for the erection of said building.

The said Womac & Welch also, in the year A. D. 1860, informed
297 this deponent, as president of the Batesville Institute, that Hirsch & Adler were desirous to occupy the store-rooms and other parts of the house which could be occupied, except the Masonic hall and rooms appertaining thereto, and that they would allow the said Womac & Welch a fair rent therefor. And they proposed that if the Batesville Institute would consent to such occupation by the said Hersch & Adler, that they, Womac & Welch, would allow to the Batesville Institute the same upon a settlement with it. I informed them that the Batesville Institute would not be accountable for any loss which might be occasioned by fire or abuse of the property by such occupation by the said Hirsch & Adler; but if they were willing to take the risk, and account to the institute for the rents, &c., I, in behalf of the institute, would make no objection to such occupation; and Womac & Welch permitted them to occupy the house, which they and those who claim to hold under them have occupied from thence up to the present
298 time, or until the same was placed in the hands of a receiver in chancery, at the November term of the circuit court of Independence County aforesaid, for the year A. D. 1867, to wit, on the 8th day of February, A. D. 1868, when, upon petition of the said Thomas Cox against Simon Adler, who claims to hold the possession of said property through and under the said Hirsch & Adler, *when* Edwin R. McGuire was by the said court appointed a receiver in chancery, to make such repairs upon said building as were absolutely necessary to preserve said institute building, and to use the rents of the building for that purpose; which said rent, or a sufficient part thereof, was by said court ordered to be paid over by the said Simon Adler to the said McGuire as such receiver, to be by him applied to the repairing of the house; and that said receiver should in nowise interfere with the rights or possession of the said Simon Adler, or those claiming under him, except so far as may be necessary to enable the said receiver to perform his du-
299 ties in making the necessary repairs upon the house to preserve from improper use and injury. A duly certified copy from the record of said order remaining in said court is marked as Exhibit "C," and herewith attached to this deposition and made a part hereof, and to which reference is hereto made by me for greater certainty of the contents of said order. The said McGuire, as such receiver, has made some repairs on said building, and the said Simon Adler and those claiming under him still occupy the building. And, after what repairs have been made, I believe the said building is yet damaged to extent of five thousand dollars, and that it would require at least that sum to put the house in that condition and repair it was by the contract to be when finished or completed.

The stockholders having been greatly impoverished during the late war, and the house having became so greatly injured and damaged, and the corporation of the Batesville Institute not having any money on hand to make the necessary repairs to said building to preserve
300 it from ruin, I, as president of the Batesville Institute, called a meeting of the board of directors of said corporation to take into consideration what should be done about said building.

The board of directors met on the 10th day of August, A. D. 1867, when the matter was laid before said board of directors for its direction, and after the matter was considered of by the board, it was unanimously resolved by the board of directors of said corporation. "That considering our great losses during the late war, and our present con,

dition, the corporation is unable to make the necessary repairs to said building to preserve it from injury, and that the said property should be sold if a purchaser could be found."

After said resolution was adopted by the board of directors as aforesaid, Thomas Cox, esq'r, proposed to the board that he would purchase said house and lots upon which the said house is situate, and that he would give the sum of eight thousand dollars therefor, payable in six and twelve months.

301 Which proposition to purchase was then considered of by the said board of directors, and it was then and there accepted, and resolved and ordered, by the said board of directors, that I, William Byers, as president of that corporation, should and was thereby directed and empowered, in behalf of the said corporation, to sell and convey unto the said Thomas Cox the house and lots belonging to that corporation, situate in the town of Batesville, (they being the same house and lots now in controversy in this suit,) for the sum of eight thousand dollars, payable six and twelve months from that date, taking his notes therefor, and reserving in the deed to be made to him a lien upon said property so sold, for the payment of the purchase-money, and that said notes should draw interest at the rate of ten per cent. per annum from due until paid. And that I, as such president, should execute a proper deed of conveyance, in behalf of said corporation, for said property, so sold to the said Cox, under the seal of the corporation, and acknowledge & deliver the same to the said Cox upon his

302 executing to the Batesville Institute his notes for the purchase-money, according to the terms aforesaid.

And in pursuance of that authority to me given, I, as president of the Batesville Institute, for, and in behalf of, and in the name of the Batesville Institute, made and executed, under the seal of said corporation, a deed of conveyance of said property to Thomas Cox, and his heirs and assigns forever, and in said deed reserved a lien in favor of the Batesville Institute, upon the property thus conveyed, for the payment of the purchase-money, and duly acknowledged and delivered said deed on the 12th day of August, A. D. 1867, the said Cox having first executed and delivered his notes to the Batesville Institute for the purchase-money, according to the terms of said purchase.

The foregoing are the facts relative to the sale and conveyance of said property to the said Thomas Cox. The whole transactions connected therewith were public and notorious, and the sale was made in good faith, and upon the terms set forth above, and without any

303 view or purpose of wronging or defrauding any person or persons. I believe the property sold for all it was worth at that time in its then condition. I would not have been willing to have given that price for it in the condition it was then in.

The consideration for said sale and conveyance was not a fictitious or immaginary one. It was real, and in exact accordance with the contract as above stated, and was expected to be collected and realized. And the sale and conveyance of said property to the said Cox, so far as I know or have information, was fair and honest and without intending to defraud any one.

I am well acquainted in the town of Batesville, and with the building known as the Batesville Institute, and believe that the rents and profits for the use and occupancy of the said building (other than the Masonic hall and rooms pertaining thereto) *is*, and ought to be, of the value of from fifteen hundred to twenty-five hundred dollars per annum, from the year A. D. 1860 up to the present time.

Cross-examined by compl'ts:

304 I know that Mr. Hirsch and Adler did advance to the said Womac & Welch a considerable amount in goods and money, and paying hands, &c, to aid them in the erection of the said Batesville Institute building. The amount I do not know; it probably amounts to six or eight thousand dollars up to the first of January, A. D. 1861. I do not know that they advanced anything after that date, and I know the said Womac & Welch did a large amount of work for the said Hirsch & Adler in building houses, &c., and I do not know what amount the said Hirsch & Adler advanced over and above the work done by the said Womac and Welch farther than what I have heard the said Womac & Welch, or the one or other of them, say.

My understanding from the parties—from Hirsch & Adler, and Womac & Welch— that about the first of January, A. D. 1861, *that* said Hirsch & Adler refused to make further advances to the said Womac & Welch, to aid them in the erection of said building, unless they would in some way secure the said Hirsch & Adler from loss by

305 making such advances, and proposed to the said Womac & Welch if they would make out and file in the proper office their account against the Batesville Institute, as builders & mechanics, to obtain a mechanics' lien upon said building, and would give a deed of trust to W'm E. Gibbs, esq'r, so as to give him control of said claim filed for a mechanics' lien, for the benefit of the said Hirsch and Adler, for what advances they then had made, as well as what they might thereafter make. And the said Womac & Welch did make out their account and file it, for the purpose of securing a mechanics' lien upon said building, and did about the same time, probably the same day, make and deliver a deed of trust to the said W'm E. Gibbs, for the benefit of the said Hirsch & Adler.

The deed of trust here referred to is the same that is mentioned in the complainants' bill, and also in the defendant Womac's answer. And a judgement was afterwar's obtained on said mechanic's lien in favor of the said Womac & Welch against the Batesville Institute, at the time and in the manner stated in my examination-in-chief.

306 At the time of the sale of the property called the Batesville Institute, by the Batesville Institute to Thomas Cox, there was pending in the circuit court of Independence County, State of Arkansas, in chancery, a suit in favor of John Ruddell, Thomas Cox, and William Byers against the Batesville Institute to enforce a vendor's lien upon the same property, for a part of the consideration or purchase-money for said property, and that said suit is still depending in said court.

When the board of directors were called to consider what should be done relative to said building, whether the corporation should undertake to repair it, or whether they would sell it, after full consideration, the board unanimously resolved to sell the building, if a purchaser could be found.

After that determination was made, and a resolution to that effect considered and adopted, there was a consultation between the members of the board, as to what price should be asked or taken for said building, and terms of sale, &c. Some of the directors expressed their opinions that the property, in its then damaged condition, was not

307 worth over five thousand dollars. Others thought it worth probably six thousand dollars, and others more, but that they would not give that sum for it, as with such sum, the' could build a house which they would prefer to that house or property. And while the members of the board were thus canvassing as to price and terms of sale that would

be most beneficial to the corporation, Thomas Cox, esq., made his proposition to the board to purchase as aforesaid, which proposition, after consideration by the board, was deemed a good offer, and that it would be

to the interest of the corporation to sell at that price; and the board then accepted the proposition, and ordered and directed the conveyance to be made as stated in my examination-in-chief. The resolution to sell, and the proposition of Mr. Cox to buy, and the acceptance of his proposition by the board of trustees, were all upon the same day. There was public notice given of the meeting of the board of trustees. The meeting was held without any consealment, but there was no notice
publishing that the building would be sold, after the resolution
308 or order to sell was adopted by the board. There was, however,
no consealment about the sale. The business was tran'acted openly and with the us'al publicity of such meetings and the transactions of said board of trustees.

Re-examined by attorney for Womac, one of the defendants:

The house was never completed by Womac & Welch, and never was received by the Batesville Institute. Womac & Welch were never released or intended to be released from any part of their contract with the Batesville Institute about building the said house by the Batesville Institute.

And farther this deponent saith not.

W. BYERS.

Sworn to and subscribed before me this 24th day of March, A. D. 1869.

ELISHA BAXTER,
Register in Bankruptcy.

309 *Exhibit "A" to W'm Byers' deposition.*—W. BYERS.

This memorandum of agreement, made and entered into by and between the Batesville Institute, party of the first part, and John E. Womac and Thomas Welch of the second part, witnesseth, that the said party of the second part, for and in consideration of sixteen thousand eight hundred dollars, to be paid to them by the party of the first part, in the manner and at the times hereinafter stated, covenants to and with the said party of the first part, to build a house for the said party of the first part in the town of Batesville, upon the site where the slate house called the Batesville Institute . The said house to be sixty feet wide and ninety feet long, and three stories high. Rock foundation or basement story. And the three stories to be of brick. The house to be upon the plan hereto annexed. The first story in the front part of the house to be twelve feet high in the clear between the floor
and the plastering. The second story in the front to be eleven feet
310 high in the clear between the floor and the ceiling or plastering.
The third story in front to be sixteen feet six inches high in the clear between the floor and ceiling. The first story in the back part of the building to be eleven feet in the clear. The second story fifteen feet in the clear, and the third story, so that the house will be the same hight*h* in the front and back part.

The division-walls to be of brick whereever so indicated on the plan hereto attached. And the other partition-walls to be frame-work.

The first story to be store-rooms and counting-rooms, and an entrance

to the other story. The second story to have a large hall, library-room, offices, and passages or halls, as indicated in the plan hereto attached. The third story to have Masonic hall, Odd-Fellows' hall, and rooms, &c., as indicated on the plan hereto attached. And above the third story there are to be parapet-walls all round the house, sufficiently high to protect the roof, and sufficiently high to receive or to have the
311 indentations for the lettering, as indicated on the plan.

The roof to be of tin, corregated iron, or some other substantial fire-proof material. And there is to be a belfry of the proper size and character to correspond with the general appearance of the house. The front of the house is to have brick pilasters with stone base and capitals, as indicated on the draft or plan of the house, and rock door & window sills all around the house; and rock caps in front of the house—the two first storeys—and over the circular windows of the third story plastered and painted caps, in imitation of rock; and the parapet-walls cap'ed with rock three and one-half inches thick, with sufficient projections over the wall.

The windows to be 12-light windows, 12 by 24 inches glass.

All the doors in front of the house to be double-sash doors. The doors to have transums, and to be of the proper size to correspond with the stories, windows, &c. The house to be plastered complete—all to be two-coat work, except in the large hall on the second story called
312 on the plan hereto attached Ruddell hall and the Masonic hall, which is to be three-coat work, with centre pieces and stucco cornice, equal in appearance and beauty, at least, to the centre pieces and cornices which were in what was called the town-hall and Masonic hall in the late building of the institute which was destroyed by fire.

The house to be painted complete, outside and inside, wherever it shall be necessary to be painted.

There *is* also two cisterns to be built at the back end of the house, at the corners thereof, at the points indicated on the plan of the house, of as large a size as can be made at those points. Said cisterns to be sunk into the ground six feet, and floored with well-burned brick or rock, and the walls of the cistern to be at least 13 inches thick, and to be plastered complete by hydraulic cement, and to be raised so high that the floor of the pourch at the back end of the house will rest on the top of said cisterns. The said cisterns to be well covered and finished
313 in every particular complete.

There is also be a pourch at the back end of the house the width of the house, and the pourch is to be sufficiently wide to cover the cisterns aforesaid, with plank roof, painted with fire-proof paint.

The said parties of the second part are to furnish the materials of every kind and description whatever for said house; to fully complete it in every respect, (except the rubbish and what materials are left of the building lately destroyed by fire, which they are to have,) and to do all the work of every description or kind whatever necessary to the full and perfect completion of said house, and to finish said house and appendages herein named or indicated upon the plan of the house hereto attached, including stone steps to the front doors, and also including an iron ballustrade extending across the whole width of the front of the house.

The ballustrade to be three feet wide, and finished in a neat manner, & in a style corresponding with the character of the house.

314 The work to be done in a neat, substantial, and workman-like manner, and the materials are to be of the best quality. No bad work or bad material to be received in the building. The whole to be

subject to the inspection of the building committee of the Batesville Institute. The building to be completed and the keys delivered by the 15th day March, A. D. 1861.

In consideration of which undertaking of the said party of the second part, the said party of the first part binds herself to pay the said party of the second part the said sum of sixteen thousand eight hundred dollars, as follows, to wit: Fifteen hundred dollars on the first day of May next; fifteen hundred dollars on the first day of November next, and two thousand dollars on the first day of May, A. D. 1860, and the residue, say eleven thousand eight hundred dollars, when the
315 building is completed and the keys delivered.

And it is distinctly understood by the parties to this agreement, that for any slight variation from the plan of the building hereto attached and specified in this agreement made by direction of the building committee, if the work shall not have to be done over again, there is to be no extra charge.

The outside walls of said building are to be of the following thickness: The first story to be 22 inches thick; the second story to be 18 inches thick, and the third story 13 inches thick; the inside walls to be of sufficient thickness to be substantial.

The house is to be pencilled neatly, and the chimnies capped with rock. In short, everything connected with said house is to be made and done in a style and character corresponding with the character and design of the house as to its architectural beauty and strength, and durability of the building. And if there are any things not mentioned in this agreement, or indicated in the plan hereto attached which may be nec-
316 essary to a complete finish of the house, the said party of the second part is to do the same.

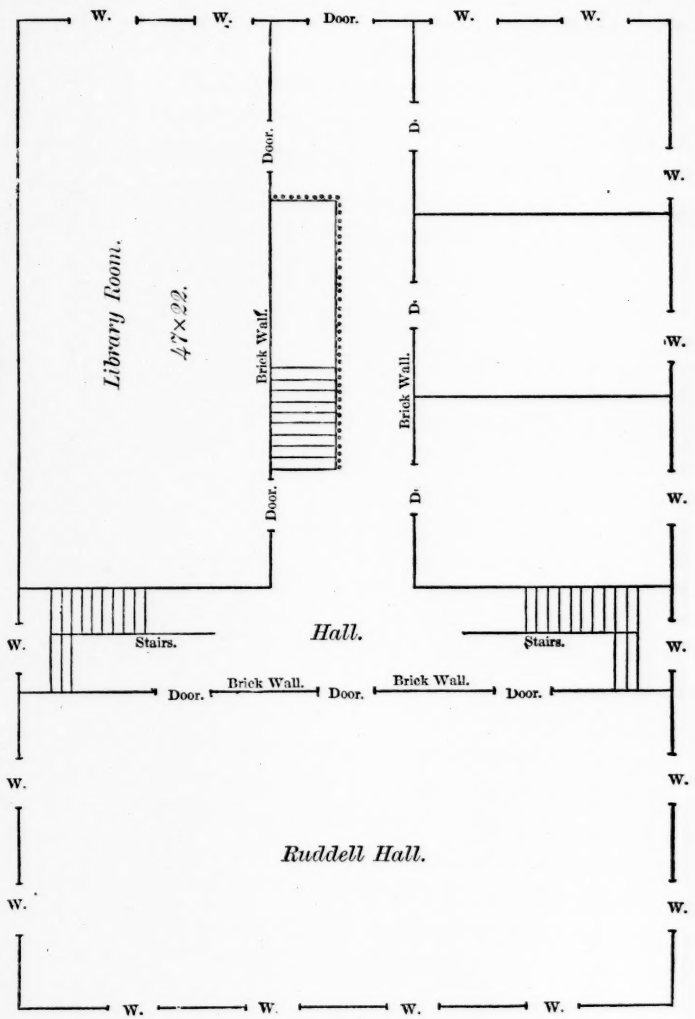
In testimony whereof William Byers, as president of the Batesville Institute, for and in behalf of the said Batesville Institute, has hereunto set his hand, and William P. Byers, as secretary of the Batesville Institute, attested the same. And the said parties of the second part have hereunto set our hand this 21st day of March, 1859.

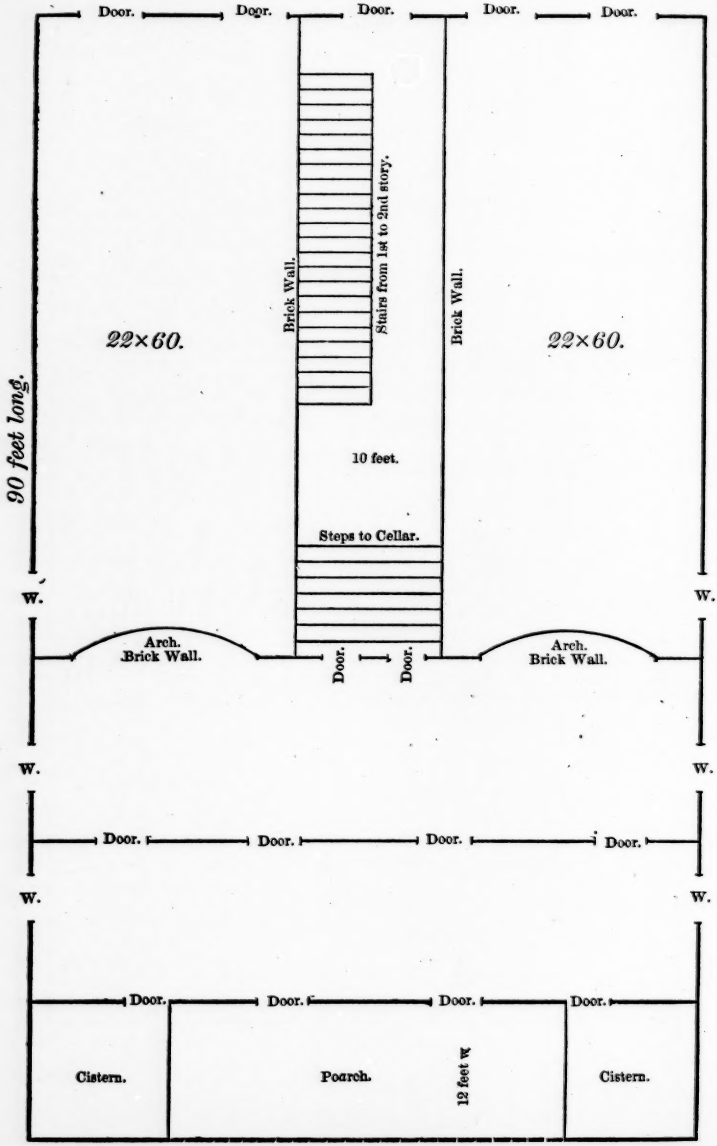
W. BYERS, *Pres't.*
JOHN E. WOMAC.
THOMAS WELCH.

Attest:
W. PRESTON BYERS, *Secretary.*

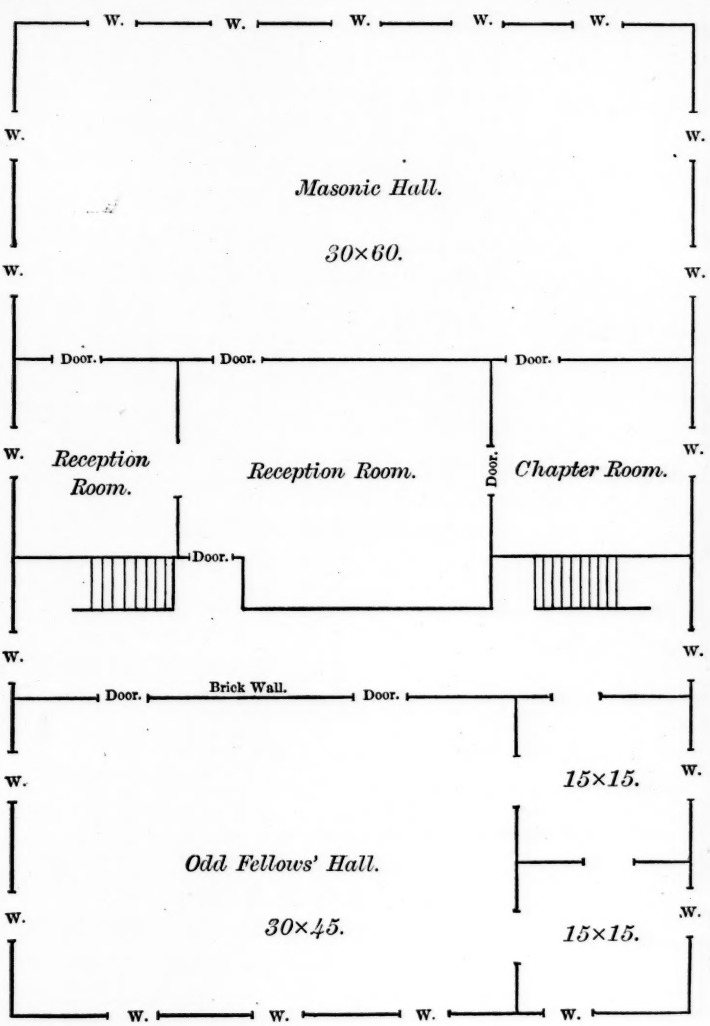
(Here follows diagram marked page 317.)

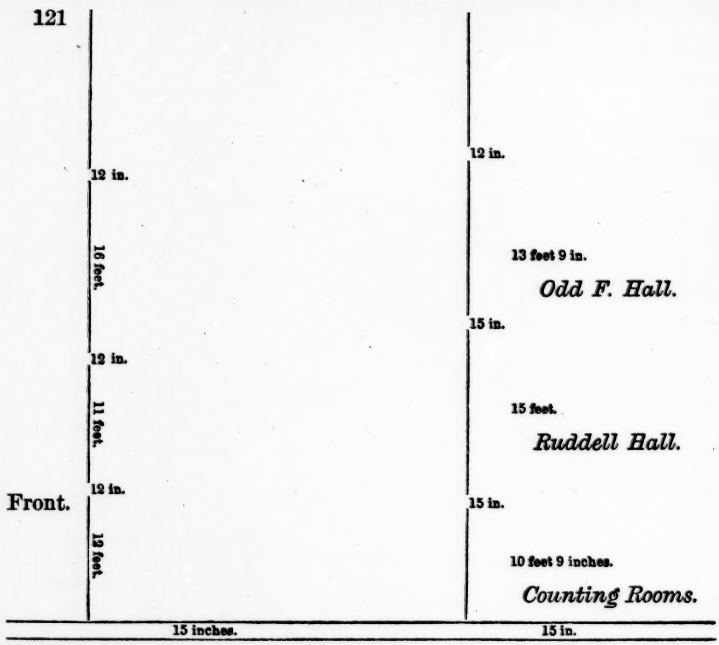
318


W.
W.
Door.
W.
W.
Door.
D.
W.
Library Room.
47×22.
Brick Wall.
D.
W.
Brick Wall.
Door.
D.
W.
W.
Stairs.
Hall.
Stairs.
W.
Door.
Brick Wall.
Door.
Brick Wall.
Door.
W.
W.
Ruddell Hall.
W.
W.
W.
W.
W.
W.


Door.
Door.
Door.
Door.
Door.
90 feet long.
22×60.
Brick Wall.
Stairs from 1st to 2nd story.
Brick Wall.
22×60.
10 feet.
Steps to Cellar.
W.
W.
Arch.
Brick Wall.
Door.
Door.
Arch.
Brick Wall.
W.
W.
Door.
Door.
Door.
Door.
W.
W.
Door.
Door.
Door.
Door.
Cistern.
Porch.
12 feet W
Cistern.

320


W.
W.
W.
W.
W.
W.
W.
Masonic Hall.
30×60.
W.
W.
Door.
Door.
Door.
W.
Reception Room.
Reception Room.
Door.
Chapter Room.
W.
Door.
W.
W.
Door.
Brick Wall.
Door.
W.
15×15.
W.
Odd Fellows' Hall.
W.
30×45.
15×15.
W.
W.
W.
W.
W.



Sleepers	1	3 inch.
Front, 1st story, between floor & cealing	12 feet.	
Joice, 1 foot wide	1	"
2 story, between floor & ceiling	11	"
Joice, 1 foot wide	1	"
3 story, between floor & ceiling	16	"
Forty-two feet 3 inches	42	3

Back sleepers	1 foot	3	inches.
1st story, between floor and ceiling	10 "	0	"
Joice	1 "		
2d story	15 "		
Joice	1	3	
322 3 story	13	9	
	42	3	

The foregoing drafts are those referred to in the foregoing contract, and are intended merely as rough sketches of the design of the house.

W. BYERS, *Pres't.*

The foregoing is the Exhibit "A," referred to in and made part of my deposition.

W. BYERS.

Exhibit "B" to W'm Byers' deposition.—W. BYERS.

Know all men by these presents that we, John E. Womac and Thomas Welch, as principals, and William W. Lewis, W. A. Bevans, J. W. Butler, John A. Wise, Henry Weil, as their security, are held and firmly bound unto the Batesville Institute in the sum of ten thousand dollars, for the payment of which, well and truly to be made, bind ourselves, heirs, and legal representatives, jointly and severally.

Sign' and sealed this 21st day of March, A. D. 1859.

323 The above obligation is upon this condition: Whereas the said John E. Womac and Thomas Welch have entered into a written contract with the Batesville Institute to build for the Batesville Institute a house in the town of Batesville, according to a plan connected with said contract and as described in said contract, and the plan therewith connected, for the sum of sixteen thousand eight hundred dollars, payable at the time and in the manner therein specified:

Now if the said John E. Womac and Thomas Welch shall well and truly fulfill and comply with their said contract in writing, and build and complete said house in every respect as they have bound themselves to do by said written contract, by the fifteenth day of March, A. D. 1861, then this obligation to be void, else to remain in full force and effect.

Given under our hands and seals this day and date above written.

JOHN E. WOMAC. [SEAL.]
THOMAS WELCH. [SEAL.]
W. W. LEWIS. [SEAL.]
W. A. BEVENS. [SEAL.]
J. W. BUTLER. [SEAL.]
324 JOHN A. PRICE. [SEAL.]
HENRY NEILL. [SEAL.]

The foregoing bond is Exhibit "B," referred to in and made a part of my deposition.

W. BYERS.

Exhibit "C" to W'm Byers' deposition.—W. BYERS.

At the adjourned November term, 1867, Saturday morning, Feb. 8th, A. D. 1868, court met persuant to adjournment—present and presiding as on yesterday—when the following proceedings were had, to wit:

THOMAS COX
vs. } Petition for receiver.
SIMON ADLER.

Be it remembered that this cause come on to be heard on this the eighth day of February, A. D. 1868, upon a demurrer to the petition of Thomas Cox, to have a receiver appointed to take charge of the Batesville Institute and rent out and repair the same, which, being submitted
325 to the court, and after argument of council, was by the court over'uled. It is, therefore, ordered and considered by the court that the demurrer to the original petition filed herein be, and the same is hereby, overruled; and that Edward R. McGuire is appointed receiver in this cause upon his entering into bond with good and sufficient securities in the sum of four thousand dollars, to be approved by the court.

It is further ordered that the said receiver shall only proceed to make such repairs as are absolutely necessary to preserve said institute building in its present state, and to use the rents of the building for that purpose, which said rent, or a sufficient amount thereof, shall be paid over by the said Simon Adler to the said receiver, to be applied to this purpose as aforesaid; and that said receiver shall in nowise interfere with the rights or possessions of the said Simon Adler, or those claiming under him, except so far as may be necessary to enable the said receiver to perform his duties as aforesaid, and to protect and preserve said buildings from improper use and injury, and that said receiver shall report his action to this court until further orders.

326 And said McGuire, consenting to act as such receiver, forthwith tenders to the court here his bond as such in the sum of four thousand dollars, with Thomas Cox and William Byers as securities; who being by the court deemed good and sufficient, said bond is by the court approved.

(Signed) R. H. POWELL, *Judge.*

STATE OF ARKANSAS,
County of Independence:

I, Reuben Harpham, clerk of the county court and ex-officio clerk of the court of chancery within and for the county and State aforesaid, do hereby certify that the above and foregoing is a true and correct transcript of the order in this cause, as I find recorded in my office in record-book C, on page 202.

In testimony whereof I have hereunto set my hand and affix' the seal of my office this the 9th day of February, A. D. 1869.

[SEAL.] REUBEN HARPHAM, *Clerk.*

327 The foregoing is a transcript from the record of the order of the court appointing Edwin R. McGuire a receiver in chancery, which is referred to in and made a part of my deposition, and marked as Exhibit C.

W. BYERS.

Opened p'r rule 69 this 1st day of June, A. D. 1869.
CHA'S P. REDMOND, *Clerk.*

328 STATE OF ARKANSAS,
County of Independence:

Depositions of witnesses taken and subscribed before me, William M. Steel, as United States commissioner for the eastern district of Arkansas, duly commissioned as such, on the 2nd day of August, A. D. 1870, between the hours of 9 o'clock a. m. and 3 o'clock p. m. of said day, at the law-office of Mess. Butler and Miller, in the town of Batesville, in the county of Independence, in the State of Arkansas, in pursuance of a commission hereto annexed as evidence in a certain cause now depending in the circuit court of the United States of America in and for the eastern district of Arkansas.

Simon Adler.

SIMON ADDLER, a witness known to me to be of lawful age, being to me at *at* the same time and place aforesaid produced, and being by me *the* first sworn to testify the whole truth, and nothing but the truth, in

regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit:

329 I commenced clerking for the late firm of Hirsch & Addler, in the year 1853, in the town of Batesville, and continued with them until 1862. The' commenced occupying the building known as the Batesville Institute on the 15th of July, 1861; do not think they collected any rents or exercised any control over it prior to that date. They oc'upied the store-rooms in said building from 15 July, 1861, up to the 3d day of May, 1862. I think they used some *some* of the up'er rooms to put wheat in for a month or two during that time. I think for the time they oc'upied said building, being 9 months & 18 days, $336.00 would be a fair rent. They expended during said time 75.75, leaving a ballance of $260.25. (Reference is hereby made to papers hereto annexed, and marked Exhibit A.) After the 3d of May, 1862, which was the time Curtis' army came to Batesville, Hirsch and Addler used one of the rooms a month or two, and then the goods were auctioned of', and they quit business until Col. Livingstin came to Batesvill', at which time he took possession of the building. (Col. Liv-

330 ingstin was a commander in the Federal Army.)

I have acted as agent for M. Kaufman & Co. since the 15th day of October, 1866, which was the time that I returned to Batesville myself after the war. The am't of rents received by M. Kaufman & Co. from all sources from December, 1865, to date is thirty-six hundred and ninety-five dollars & thirty-eight cents, ($3,695$\frac{38}{100}$,) particulars of which

3,695.38 *is* fully set forth in Exhibit B hereto attached and made a part
2,518.40 of this deposition. During the time mentioned aforesaid, from
1,176.98 December, 1865, up to date, they have paid out twenty-five hundred and eighteen dollars and forty cents, ($2,518.40,) with an additional amount for insurance which he does not at present know. Particulars of expenditures set forth in Exhibit C, which is made a part of this deposition. At this time I, myself, occupy one of the store-rooms and Theadore Maxfield one, and W. H. Rosa, J. P., has an office up-stairs, and Mr. E. W. Thompson has one of the offices, and the estimate of rents as set forth include' all of these rooms up to the 1st day of August,

331 1870. Theadore Maxfield is occupying one of the store-rooms at twenty-five dollars per month, and I am occupying another which I think worth the same, and Mr. Rosa and Mr. Thompson each have an office for which they pay six dollars per month, and these are all the renters of the institute at present.

Cross-examined:

Maxfield has one cellar and I have the other, and we occupy both store-rooms and cellars at twenty-five dollars p'r month. I think that a fair valuation for them, at least that was the most I could get. Store-rooms are cheaper now than they were in 1865 & '66. I know that Mr. Graham occupied the store-room now occupied by Mr. Maxfield, in 1860 or '61; don't know what rent he paid. I think the rent was paid to Mr. Byers or to Warmac and Welch. Hirsh & Addler had their auction and sold of' their goods in July or August, 1862,

332 and I am certain it could not have been later than that. I could refer to the exact time, if necessary; do not know whether any rents wer' paid by the Federal troops during the time they occupied the building. I know that Gen'l Curtis and Col. Livingston both oc'upied the house or a portion of it when they oc'upied Batesville.

SIMON ADLER.

Attest:

W. M. STEEL, *U. S. Commissioner.*

There not being time to conclude the taking of the depositions hereinafter, the taking of the deposition of Simon Addler, by consent of Att'ys Butler and Miller, for the complainants, and Byers & Cox, att'ys for the defence, the taking of the depositions is adjourned to the 3d inst.

W. M. STEEL, *U. S. Com'r.*

333 *Batesville Institute to Hirsh & Adler, Dr.*

1861.			
July 20.	Am't p'd for hauling 175 loads for repairing sidewalk @ 25	43 75	
	Am't p'd negro for 10 d's' services	10 00	
23.	" " " " ditching in cellar	20 00	
	" " for 100 f't lumber for ditch	2 00	
			75 75

CREDIT.

By am't of bill to cr. on institute bill		75 75
		" "

Mess. Hirsh & Adler to Batesville Institute, Dr.

For rent of store-rooms from 15th July, 1861, to 3rd May, 1862, being 9 mo. & 18 d's, at 35.00 p'r mo..	336 00	
Credit by am't of bill rendered	75 75	
		$260 25

This is the paper marked Exhibit A and referred to in the deposition of Simon Addler hereto annexed.

SIMON ADLER.

Attest:

W. M. STEEL, *U. S. Commissioner, &c.*

334 *Mess. M. Kaufman & Co. to Batesville Institute, Dr.*

1865.		
Dec. 31.	For rent of store-room, Louis Cohen, as per % of E. F. Rushing, 4 mos.	77 35
1866.		
Aug't 1.	For rent of store-room & cellar for Steal & Martin for the month of Aug't	40 00
	" " " " " " Sept	40 00
	" " " " " " October	40 00
	" " " " " " Nov'r	40 00
	" " " " " " Dec'r	40 00
1867.		
Jan'y 1.	Am't of Steal & Martin's rent to May 1st (at which time they surrendered the house.)	85 00
May 8.	Am't of rent of store-house, McClenden, for 3 weeks, at $10.00 per week	30 00
23.	Am't rec'd for stove-pipe sold	5 00
	Am't rec'd of Maj. Andrews for rent of 1 room up-stairs from 1st May to 31st Aug't, 4 mo., @ $17.50	70 00
June 30.	Rec'd from L. Dearmott for 1 room, (up-stairs,) June	17 50
	For rent, of U. S., for town-hall for hospital, in May	35 00
July 1.	Rent of store-room & cellar from U S., 1 mo., also 1 room, up-stairs, for July, (unoccupied in mo. of June)	57 50
Aug't 1.	" of same in this month	57 50
Sept. 1.	" " " " " "	57 50
Oct. 1.	" " " " " "	57 50
	Am't forward	$749 85

335	Am't br't forward		749 85
1867.			
Nov. 1.	Rent of store-room & cellar from U. S., 1 mo.; also 1 room up-stairs.		57 50
Dec. 15.	" of small room up-stairs, 15 days, from 1st Dec., vacated then on 16th Dec		8 75
	For rent of small room up-stairs for Sep., October, & November, at 17.50		52 50
Dec. 31.	For rent of store-room & cellar		40 00
	" " " little room up-stairs this mo		17 50
1868.			
Jan'y 1.	" " " store-room & cellar " "		40 00
	" " " small room up-stairs, Jan'y & Feb'y		35 00
	" " " store-room & cellar, Feb'y		40 00
	" " " small room in March		17 50
	Rent of store-room & cellar, M'ch & Ap'l		80 00
	" " small room up-stairs, Ap'l & May		35 00
	" " store-room & cellar, May & June.		80 00
	" " small room, June, July, & 15 d's in Aug't		43 75
	Then this little room was vacated.		
	Refer to balance of a/c		
	Rent of store-room & cellar, Aug't, Sept., & Oct		120 00
	" " printer's rent of town-hall from 1st Sept. '67 to 31st Jan'y, 1868, 5 months, at 15.00 per mo. (Then this hall was vacated.).		75 00
	For rent of store-room & cellar for months of Nov. & December		80 00
1869.			
Jan'y 1.	Rent of store-room & cellar to 31st M'ch		120 00
	" " same 10 d's in April		13 33
	(Store-room & cellar closed til' 1st May.)		
	Forw'd		1,705 68
336	Forward		1,705 68
May 31.	Rent of store-room & cellar to auctioneer		70 00
	Store then closed from 13th Nov'r to 21st Dec'r, 1869.		
Dec'r 21.	Rent of store-room & cellar to A. H. Joblin, until 29th Jan'y, 1870, 1 mo. & 8 d'ys, 25.00 p'r mo		31 70
	Then closed till 1st Feb'y 1870.		
	Rent of 2 small rooms, up-stairs, 3 mo. & 7 d's, to Dr. C. W. Brown, 6.25 each per month		40 50
	Rent of town-hall for picture-gallery the month of July, '69		10 00
	Then closed until Nov. 8th, 1869.		
	Rent of town-hall Thompson, part of Nov'r & Dec'r, making 1 mo		10 00
	Rent of town-hall for free school, 3 mos., at 16.00 p'r mo		48 00
	Rec'd of Kitchen rent of town-hall office from Sept. 1st, 1867, to Jan'y 31, '68, 5 mo. @ 12.50		62 50
	Then this office was vacated.		
1870.			
Jan'y 17.	Rec'd of W. H. Rosa, for room up-stairs, from 17th Dec '69		6 00
	Rec'd from E. W. Thompson, for rent, Jan'y 6, of office up-stairs from Jan'y 6 to Feb'y 6, 1 mo		6 00
M'ch 1.	Rent of store-room & cellar, for Feb'y		25 00
	" " " " until 30 June		100 00
	" " small, room up-stairs, to M'ch 6th		6 00
	" " " " " " " 17th		12 00
	Forw'd		2,133 38
337	Amo't brought forw'd		2,133 28
1870.			
M'ch 1.	Rent of back room, up-stairs, to Ap'l 6th		6 00
	Rec'd of Col. Baxter, for rent of office, from May 1, '66, to April 30th, 1870, four years, at 5.00 p'r month		240 00
	Rent of office, up-stairs, from M'ch 17th, '70, to 30th Ap'l, 1½ mo.=6.00		9 00
	Rent of store-room & cellar in July, '68		40 00
July 31.	" " " " " July, 1870		25 00
	" " " " " occupied by Simon Adler, from 1st Aug't '66 to 31st day of July, 1870, 4 years, 25.00 p'r mo		1,200 00
	Amount of office rent due by E. W. Thompson		24 00
	" " " " " W. H. Rosa		18 00
			3,695 38

There not being time to conclude the taking of the depositions hereinafter, the taking of the deposition of Simon Addler, by consent of Att'ys Butler and Miller, for the complainants, and Byers & Cox, att'ys for the defence, the taking of the depositions is adjourned to the 3d inst.

W. M. STEEL, *U. S. Com'r.*

333 *Batesville Institute to Hirsh & Adler, Dr.*

1861.			
July 20.	Am't p'd for hauling 175 loads for repairing sidewalk @ 25	43 75	
	Am't p'd negro for 10 d's' services	10 00	
23.	" " " " ditching in cellar	20 00	
	" " for 100 f't lumber for ditch	2 00	
			75 75

CREDIT.

By am't of bill to cr. on institute bill		75 75
		" "

Mess. Hirsh & Adler to Batesville Institute, Dr.

For rent of store-rooms from 15th July, 1861, to 3rd May, 1862, being 9 mo. & 18 d's, at 35.00 p'r mo	336 00	
Credit by am't of bill rendered	75 75	
		$260 25

This is the paper marked Exhibit A and referred to in the deposition of Simon Addler hereto annexed.

SIMON ADLER.

Attest:
W. M. STEEL, *U. S. Commissioner, &c.*

334 *Mess. M. Kaufman & Co. to Batesville Institute, Dr.*

1865.		
Dec. 31.	For rent of store-room, Louis Cohen, as per ⅔ of E. F. Rushing, 4 mos.	77 35
1866.		
Aug't 1.	For rent of store-room & cellar for Steal & Martin for the month of Aug't	40 00
	" " " " " " Sept	40 00
	" " " " " " October	40 00
	" " " " " " Nov'r	40 00
	" " " " " " Dec'r	40 00
1867.		
Jan'y 1.	Am't of Steal & Martin's rent to May 1st (at which time they surrendered the house.)	85 00
May 8.	Am't of rent of store-house, McClenden, for 3 weeks, at $10.00 per week	30 00
23.	Am't rec'd for stove-pipe sold	5 00
	Am't rec'd of Maj. Andrews for rent of 1 room up-stairs from 1st May to 31st Aug't, 4 mo., @ $17.50	70 00
June 30.	Rec'd from L. Dearmott for 1 room, (up-stairs,) June	17 50
	For rent, of U. S., for town-hall for hospital, in May	35 00
July 1.	Rent of store-room & cellar from U S., 1 mo., also 1 room, up-stairs, for July, (unoccupied in mo. of June)	57 50
Aug't 1.	" of same in this mouth	57 50
Sept. 1.	" " " " " "	57 50
Oct. 1.	" " " " " "	57 50
	Am't forward	$749 85

335		Am't br't forward	749 85
1867.			
Nov. 1.		Rent of store-room & cellar from U. S., 1 mo.; also 1 room up-stairs.	57 50
Dec. 15.		" of small room up-stairs, 15 days, from 1st Dec., vacated then on 16th Dec	8 75
		For rent of small room up-stairs for Sep., October, & November, at 17.50	52 50
Dec. 31.		For rent of store-room & cellar	40 00
		" " " little room up-stairs this mo	17 50
1868.			
Jan'y 1.		" " " store-room & cellar " "	40 00
		" " " small room up-stairs, Jan'y & Feb'y	35 00
		" " " store-room & cellar, Feb'y	40 00
		" " " small room in March	17 50
		Rent of store-room & cellar, M'ch & Ap'l	80 00
		" " small room up-stairs, Ap'l & May	35 00
		" " store-room & cellar, May & June	80 00
		" " small room, June, July, & 15 d's in Aug't	43 75
		Then this little room was vacated.	
		Refer to ballance of ⅔	
		Rent of store-room & cellar, Aug't, Sept., & Oct	120 00
		" " printer's rent of town-hall from 1st Sept. '67 to 31st Jan'y, 1868, 5 months, at 15.00 per mo. (Then this hall was vacated.)	75 00
		For rent of store-room & cellar for months of Nov. & December	80 00
1869.			
Jan'y 1.		Rent of store-room & cellar to 31st M'ch	120 00
		" " same 10 d's in April	13 33
		(Store-room & cellar closed til' 1st May.)	
		Forw'd	1,705 68
336		Forward	1,705 68
	May 31.	Rent of store-room & cellar to auctioneer	70 00
		Store then closed from 13th Nov'r to 21st Dec'r, 1869.	
Dec'r 21.		Rent of store-room & cellar to A. H. Joblin, until 29th Jan'y, 1870, 1 mo. & 8 d'ys, 25.00 p'r mo	31 70
		Then closed till 1st Feb'y 1870.	
		Rent of 2 small rooms, up-stairs, 3 mo. & 7 d's, to Dr. C. W. Brown, 6.25 each per month	40 50
		Rent of town-hall for picture-gallery the month of July, '69	10 00
		Then closed until Nov. 8th, 1869.	
		Rent of town-hall Thompson, part of Nov'r & Dec'r, making 1 mo	10 00
		Rent of town-hall for free school, 3 mos., at 16.00 p'r mo	48 00
		Rec'd of Kitchen rent of town-hall office from Sept. 1st, 1867, to Jan'y 31, '68, 5 mo. @ 12.50	62 50
		Then this office was vacated.	
1870.			
Jan'y 17.		Rec'd of W. H. Rosa, for room up-stairs, from 17th Dec '69	6 00
		Rec'd from E. W. Thompson, for rent, Jan'y 6, of office up-stairs from Jan'y 6 to Feb'y 6, 1 mo	6 00
M'ch 1.		Rent of store-room & cellar, for Feb'y	25 00
		" " " " until 30 June	100 00
		" " small, room up-stairs, to M'ch 6th	6 00
		" " " " " " " " 17th	12 00
		Forw'd	2,133 38
337		Amo't brought forw'd	2,133 28
1870.			
M'ch 1.		Rent of back room, up-stairs, to Ap'l 6th	6 00
		Rec'd of Col. Baxter, for rent of office, from May 1, '66, to April 30th, 1870, four years, at 5.00 p'r month	240 00
		Rent of office, up-stairs, from M'ch 17th, '70, to 30th Ap'l, 1½ mo.=6.00	9 00
		Rent of store-room & cellar in July, '68	40 00
July 31.		" " " " " " July, 1870	25 00
		" " " " " " occupied by Simon Adler, from 1st Aug't '66 to 31st day of July, 1870, 4 years, 25.00 p'r mo	1,200 00
		Amount of office rent due by E. W. Thompson	24 00
		" " " " " " W. H. Rosa	18 00
			3,695 38

This is the paper, marked Exhibit B, and referred to in the deposition of Simon Addler, hereto annexed.

SIMON ADLER.

Attest:
W. M. STEEL,
U. S. Commissioner.

338 *Batesville Institute to M. Kaufman & Co. Dr.*

1865.				
Dec.		Am't p'd D. S. Fraley, for tin and repairs on institute valleys		110 00
"		Am't p'd E. T. Rushing's bill		42 65
1867.				
Jan'y	4.	" " for repairs on valley on roof		7 50
M'ch	4.	" " " lumber and labor on building		6 00
May	24.	" " " C. L. Gorsuch, repairs on roof		195 00
	27.	" " " 1 door on roof, Wilkinson		4 20
July	24.	" " " hauling lumber from mill & shop		2 75
	"	" " " 847 feet lumber in office		25 40
August	30.	" " " 1 door-lock		2 50
		" " " plastering office, (kitchen)		6 00
Nov'r	8.	" " " 24 window-lights in different doors of store		4 00
Dec'r	10.	" " " Montgomery & Wycough for kitchin office		35 00
		" for collecting vouchers for rent		3 00
		" p'd E. R. M'Guire, $\frac{3}{5}$, (rec'pt)		1,303 15
1869.				
Aug't	14.	" " for 1 p'r stair steps & lumber, (rec'pt)		4 25
	29.	" " taxes, as per rec'pt, for 1868		282 50
		" " for ditching in cellar, (rec'pt,)		7 00
		" " " lumber for same		2 00
		" " " door-lock in passage-hall, (U. S. Army,)		2 50
		" " " cleaning chimney, (negro,) m		3 50
1870.				
Jan'y	10.	" " " " " (rec'pt,)		4 00
		" " " Fralee & Rushing, for stove-pipe, in 1865 or 1866		8 00
		Am't forward		2,060 90
339	1870.	Amo't brought forward		2,060 90
M'ch	31.	Am't p'd taxes, (as p'r rec'pt,) for 1869		305 00
		" of rent bills handed L't Dearmott for collecton, and not collected, and are yet in process of collection		152 50
		Am't of insurance p'd.		

Exhibit C.

This is the paper, marked Exhibit C, and referred to in the deposition of Simon Addler, hereto annexed.

SIMON ADLER.

Attest:
W. M. STEEL,
U. S. Commissioner.

340 *McCanany.*

August the 3d, 1870, the taking of depositions was resumed at 9 o'clock a. m.; present Butler & Miller for complainants, Byers & Cox for defendants, at the law-office of Butler & Miller, at which time and place MICHAEL MCCANANY, of Jacksonport, to me well known, being first duly sworn, deposes as follows, viz:

We, that is Mr. Syler and myself, occupied the room known as the town-hall in the Batesville Institute as a printing-office, in the year 1867, about 5 months, at fifteen ($15) dollars per month; we vacated the said room because the building was leaking and the plastering was falling off, and we thought the building unsafe to oc'upy—or thought it dangerous and insecure, and we were really afraid to remain in the room;

the floor of the room sank down while we were in it, which was likely occasioned by the weight of our printing material; however, the room was in bad condition and got worse during our oc'upancy, on account of the plastering falling off, and the leaking of the roof. I thought fifteen (15) dollars a very high price on account of the condition of
341 the room and the surroundings generally; the condition of the building generally was about the same as the room we oc'upied. I think, at least I know, that the room oc'upied by L't Carlin as a Q. M. office at the time, which was one of the lower store-rooms, was frequently flooded so that he would have to move his stores to prevent their being damaged; the back portion of the store-room oc'upied by Simon Addler was also frequently wet by the water leaking down through the room we oc'upied into his through the floor & plastering above.

Cross-examined:

I think our press and material would have weighed between four and five thousand pounds; we oc'upied about one-half of the town-hall, there being a plank petition through the room. We oc'upied the left-hand end. I am acquainted with the institute building from observation; taking the building in the condition it was and the condition it has been put in since we oc'upied it, and considering the whole time, I should think it ought to rent for a thousand or fifteen hundred
342 dollars annually.

Re-examined:

I base my estimate of the rent of the building upon the following: One of the store-rooms was oc'upied by Simon Addler, one by the U. S. quartermaster; one of the upper rooms was oc'upied by Col. Baxter' law-office, one by the commanding officer of the U. S. troops at Batesville, for his headquarters, and another large room on the 2nd floore to the right of the stairway leading up into the 2nd floore of the building was oc-'upied as an Episcopal church, and the room oc'upied by us as printing-office was in the rear of those rooms; and a large hall in the 3d story was oc'upied by the Masonic and Odd-Fellows' fraternities, and another large hall on the 3d floore in the back part of the building was oc'upied by the Union League—now by the Odd Fellows. Considering that all of these rooms were rented I should think the building worth a thousand or fifteen hundred dollars p'r annum. During the time we were there
343 the Union League held, I think, 3 or 4, or four or five meetings, and perhaps a greater number.

MICHAEL McCANANY.

Attest:
W. M. STEEL,
U. S. Commissioner.

Baxter.

At the same time and place was produced TAYLOR A. BAXTER, a witness, to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I have known the Batesville Institute ever since it was built; do not know recollect when Hirsch & Addler took possession of it; think it was in the faul of 1861; they still had some goods there until Gen'l Curtis came to Batesville, which was in May, 1862, and possibly had some there when I left home, which was in June, 1862. I came back in December,

1863, and remained untill May, 1864, during which time the house was in possession of the U. S. Government. Do not know when Hirsch
344 and Addler left Batesville. They were not here when I returned in 1863, nor when I left in 1864. I left with the U. S. Army in 1862 and returned in 1863; and there was none of the citizens engaged in business while I stayed; business generally was suspended. I returned here in August, 1865; the building was in a very bad and delapidated condition, the roof nearly all having been taken off, (it was tin,) and the walls of the building were badly damaged; the plastering was considerably fallen off and the house leaked badly; the building was not in condition to be rented to any advantage.

Cross-examined:

When I returned here in 1865 the house was in possession of Enoch D. Rushing, as agent for Hirsch & Addler. I think, as agent, he rented a part of the building to a Dutchman by the name of Kahn. My recollection is that only one of the store-rooms *were* oc'upied in 1865; do not know whether there *was* any rents paid for the building while occupied by Col. Livingston's command. I think the building worth
345 about seven hundred dollars p'r year. The store-rooms, (2,) two, are worth three hundred dollars each. The room occupied by the Episcopal church is worth sixty dollars p'r annum. The (3) three
100 offices are worth about forty dollars each per annum. The town-
120 hall, cut into two rooms, I do not know whether they could be
60 rented or not; say, with my knowledge of its condition, that
600 it could be rented. The Odd-Fellows' hall, I think, worth one
880 hundred dollars p'r annum. The cellars I included with the store-rooms in the estimate of seven hundred dollars. I was under impression that they had an understanding that they paid no rent, and also the Masonic hall, thinkin' that each had stock in the building which exem'ted them from rent. I am not acquainted with the price of rents in Batesville at the present time. I have lived in the country since the faul of 1866, and am not acquainted with the rents of property since that time, having paid but little attention to it during that time.

Re-examined:

346 I have never seen any of the papers concerning the building, but my understanding was that it was built by joint-stock company, & that the Masons and Odd Fellows each had stock in it, and exempted them from rent, and the ballance of the house was for rent, but the town-hall is a room *is a room* that could not be rented in this place to any advantage, in my judgement.

I hold the office of assessor of this Independence County; am frequently in town. I have made it my duty to notice what property would sell for, but not what it would rent for. These estimates which I have made above are considering the building in good repair.

T. A. BAXTER.

Attest:
W. M. STEEL, *U. S. Commissioner.*

Rosa.

And at the same time and place WILLIAM H. ROSA was produced, known to me to be of lawful age, and after being duly sworn, deposes and says as follows, viz:

I am a tenant in the front room on the 2nd floore on the right hand of the hall, for which I pay six dollars p'r month. I have known

347 the building since 21st day of October, 1861. Hirsch and Addler were oc'upying both of the store-rooms at that time, one as a store the other as a wareroom. I do not think any of the up'er rooms were oc'upied at that time. I know they oc'upied the right-hand store-room up to the 15 June, 1862. On the 3d May, 1862, the three offices were occupied by officers of the U. S. Army. Do not know whether the lower rooms were occupied by them or not, for I was not in then. I was in Batesville during the whole time that Col. Livingston's command stayed here. They oc'upied the entire building except the Masonic hall. They occupied from January 1st, 1864, to about the 15th May, 1864. I was adjutant in one of the regiments of Col. Livingston's command. One store and one cellar were used as commissary department, the other store and cellar for Q. M. department; two offices for post headquarters; one for district Q. M. office; town-hall for militia drill-room; the Odd-Fellows' hall for quarters for Co. C., 4th Ark's Mounted Infantry. The library-room was used but once, and that for 3 days for to hold an election in. Every window in the building, except
348 those in the Masonic hall, was looped-holed and bar'icaded.

When Col. Livingston's command came into Batesville, the district Q. M. immediately seized upon every vacant house in the place, both private and public, subsequent to which he rented them out to parties, the rents of which were to accrue to the post-fund.

I left May 15, 1864, and returned the latter part of October, 1865. The condition of the building when I came back was bad, the plastering nearly all having fallen of' in some of the rooms. I moved in one of the offices in the building, in March, 1866, and have been in it ever since, sometimes as tenant, and sometime as an employee. The building was not in good repair, owing to the leaking of the roof, and a good many papers were damaged, both in the bankrupt office and in the military office. I was connected with both offices at the same time; and, at one time, some of the records in the military office were damaged so badly by being wet that we had to transcribe them; and I think that the rooms throughout the building were in a leaky condition gen-
349 erally, and the leaks extended to the store-rooms below in the northwest corner of the building, in one of the anty-rooms to the Odd-Fellows' hall, for a space about eight feet wide, and extending from the ceiling to the floore. The inner lining being saft brick, owing to the leakage in the roof, had disintegrated and fallen onto the floore, leaving the wall but the thickness of one brick, the outer course. The Odd-Feilows' hall and town-hall, I think, are both dangerous; at least, that is the current opinion; and I feel sure the Union League never paid any rent for the room they oc'upied. They met there four times.

Cross-examined:

I cannot state that there has been any great demant for offices since April, 1869, for one or two offices have been vacant nearly all the time since that time—from March, 1866, to November, 1866. Two of the offices were oc'upied from November, 1866, to March, 1867. One office was oc'upied, and then all three offices wer' oc'upied up to July, 1867. From that to the last December two of them were oc'upied and one vacant. The U. S. Government paid for the two offices seventeen dol-
lars & fifty cents each per month, and they paid forty dollars per
350 month for store-room and cellar. They occupied the store & cellar from about the 1st of May, 1867, to about the 1st day of April, 1869. I think each store-room and cellar worth thirty or thirty-five dollars per month. three offices, the front office is worth five dol-

lars p'r month, and the other two are worth four dollars per month each, I think. From the shape of the library-room, now oc'upied by the Episcopal church, from its construction and lack of light and ventilation, I feel incompetent to give an estimate of its value. The two rooms in the town-hall—I think the small one could be rented to transient persons for five or six dollars per month. I do not think the big room in the hall could be rented to any one, for the floore is badly swagged, and the room is considered unsafe by every person, I believe. It was oc'upied awhile by Mess. Syler and McCanany as a printing-office. I cannot form an estimate of the value of the Odd-Fellow's hall.

I do not know how thick the wall is, but the place which had fallen out of it was, I think, the thickness of two brick', say, about nine inches. The greatest number I ever saw in the Odd-Fellows' hall at one time was about one hundred persons. The reason why I
351 think it unsafe is that it has already swagged in the centre of the room an inch or an inch and a half, and that the floor has sunk that much before the partition-walls that cross the room; that one person walking across the floore vibrates the whole room and shakes the windows in it. The town-hall has sunk in the centre equally as much, and is equally vibratory, and my greatest reason to believe its unsafeness is that I am informed, and verily believe, that the joists are made out of gum-wood; that in the centre they have turned from a perpendicular position, and knowing that it is a wood easy to decay, from exposure to water, and having been exposed for two or three years; and, by order, the militia were restrained from drilling in the room in 1864, believing it to be unsafe. The building still leaks badly, since 1868, when the new roof was put on; I don't know whether the timbers have been wet or not; and there has been a school kept in there a part of the time, but there was a large beam put under the floore for safety, which has been removed. I am not acquainted with the price of rents of store-rooms in town; do not know the price of any store-house
352 in town. Mr. Archer has told me what he paid, but I do not now recollect what it is.

Re-examined:

When the one hundred men were in the hall and moved to the centre of the room, *and* there was a perceptible giving away of the floore. I think it must have sunk an inch lower than the swag described in my examination. When they were they had usually stayed mostly at the east end of the room, the swag being in the centre and near the west end of the room. There was between eighty and one hundred men in thare at the time. When I speak of the public school being kept there in the town-hall, I think they stayed there about three months. Whenever there is a heavy barrel rolled on the lower floore, or a pair of trucks rolled, it shakes the rooms above, and when the Masons meet my desk is always covered with plastering, which falls off from above. I consider rents here to' high, and my estimate heretofore made in my cross-examination is considering that the rooms were in good order or repair.

W'M H. ROSA.

Attest:
W. M. STEEL,
U. S. Commissioner.

353 There not being time to conclude the taking of depos tions herein, by consent of the att'ys herein, Butler & Miller for com-

plainants, and Byers & Cox, for defendants, the further taking of depositions is continued until the 4th inst.

W. M. STEEL, *U. S. Comm'r.*

Maxfield.

August the 4th, 1870, 9 o'clock a. m. The taking of depositions herein was resumed at the law-office of Butler & Miller, Messrs. Butler & Miller for complainants, Byers & Cox for defendants, at which time and place was produced THEODORE MAXFIELD, a witness well known to me to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I am merchandising. I occupy the west store-room and cellar in the Batesville Institute. I took possession on the 3d day of February, 1870. I am paying twenty-five dollars p'r month for the store-room and cellar, for the first twelve (12) months. If I keep the store I am to pay not exceeding four hundred dollars for the second year, and it optionary with me whether I keep it longer than one year. I pay 25 dollars,
354 payable at the end of every month. I consider that a reasonable rent, in the condition the room is in. I would not have given one dollar a month more. I would have kept out of it rather than have paid more.

Cross-examined:

I was in a store-room, at the time I moved into the institute, which I could have kept as long as I wanted to. The one I moved out of belonged to my father's estate. I succeeded him in the merchandise business. I was paying for it at the rate of th'ee hundred dollars p'r annum, the same as I pay for the one I now occupy. I consider the store I now occupy the cheapest, or of course I would not have gone into it. The store that W. E. Maxfield & Co. oc'upy they pay four hundred dollars per annum for. I would rather have the one I oc'upy. I do not know what Archer pays. I think his store-house is worth more than the one I occupy. He has a cellar, but I do not know whether it can be used or not. There is a good cellar under my store, which I use. To all of the cross-examination above, the attorneys for the complainants objected.

355 THEODORE MAXFIELD.

Attest:
W. M. STEEL,
U. S. Commissioner.

Turner.

At the same time and place PHILIP S. TURNER, a witness to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I am doing business next door to the institute. I have known the building nearly four years. The roof was in very bad condition from the first time I saw it up to the time it was re-covered. I do not recollect when that was. I do not know whether it was last summer, or the summer before, that the roof was put on. In rainy weather it was almost impossible to keep goods dry. I have often had to carry tubs all over the room to bail the water out. The plastering is nearly all off of all the rooms, both of the up'er stories and lower stories, I believe; I would consider the room now occupied by the Odd Fellows as a hall

unsafe with a weight reasonable for the size of the room to be in
356 it, as the floor is swagged, and shakes when one or more persons walk across it. I know that in the west corner, in the Odd Fellows' portion of the building, the wall is not more than one brick thick in one place, caused from being wet and freezing, and the ballance scaling off. Up to the time it was covered I think it would have been impossible to have rented the rooms in the building for anything like what they were worth if in repair. Col. Muligan's command, the U. S. com'is'ary, occupied the room which Mr. Maxfield now oc'upies, in 1868. I heard Col. Muligan order his men to move the com'is'aries out. He stated in my presence that he had rented the building now oc'upied by Mr. Archer from H. C. Smith.

(To the statements made by Col. Muligan or anybody else in regard to the building the defendants, by att'y, objected.)

Mr. Addler called Col. Muligan to one side, and some little conversation took place, & then they agreed to exchange rooms, Mr. Addler to take Col. Muligan's & Col. Muligan to take Mr. Addler's. It has been my understanding that the proprietors of the building were not to charge the Odd Fellows any rent for the room they oc'upied. I have
357 never known who the building belonged to, or who to look to as the proprietors of the building. I have understood that Mr. Cox, as one of the claimants, consented to that arrangement from 1866 up to the time the building was re-covered. I would not have known what the store-rooms and cellars ought to be rented at. I would almost have been afraid to have rented them at all for fear of being sued for damage. From the time it was re-covered I should think twenty-five dollars a month each for stores and cellars would be a fair rent.

Cross-examined:

I am renting a store in town. I pay twenty-five dollars a month for two rooms. One is forty feet long and twenty feet wide; the other is twenty by fifteen feet. I think it is a box-house. Do not know the size of the stores & cellars in the institute, but one of them is larger than both of mine put together. It is a brick building. I never heard Mr. Cox say that the Odd Fellows should pay no rent. I do not know what the building rented for before the new roof was put on.
358 Mess. Street and Martin and the U. S. Government oc'upied the building before the new roof was put on.

PHILIP S. TURNER.

Attest:
W. M. STEEL, *U. S. Commissioner.*

Bates.

And at the same time and place, ROBERT C. BATES, a witness to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I am deputy clerk of the county of Independence. I looked over the records, and find four suits pending concerning the Batesville Institute, as will more fully appear by Exhibit A hereto attached, as to their dates and names of parties. (To all of which testimony the defendants, by atty's, objected.)

ROB'T C. BATES.

Attest:
W. M. STEEL, *U. S. Commissioner.*

359 EXHIBIT A.

This is the paper marked Exhibit A in the deposition of R. C. Bates.
Attest: W. M. STEEL,
U. S. Commissioner.

COLEMAN HIRSCH, EX-PARTE. } Petition to appoint trustee instead of Gibbs.

Filed M'ch 2d, 1867.

BYERS, RUDDELL & COX, *vs.* BATESVILLE INSTITUTE. } Bill.

Filed M'ch 15th, 1867.

THOMAS COX *vs.* SIMON ADLER. } Petition for receiver.

Filed Feb. 7th, 1868.
Edwin R. McGuire was appointed receiver on Feb. 8th, 1868, of adjourned Nov. term, 1867.

THO'S COX *vs.* SIMON ADLER. } Ejectment.

Filed at the Nov. term, 1867.

ROB'T C. BATES.

360 And at the same time and place JOHN M. WARNER:

I have known the institute building ever since it was built. I live in Batesville; am now doing business in town. Hirsch and Addler went into the building in 1861, I think; don't know when the Addlers left; I went off in the war. Mr. Hirsch was here when I came back. Col'l Livingston's command was here, and when they evacuated the place Aaron Hirsch went off with him. I was not at home but that time during the war. The building, after the war closed, was in a bad condition, and continued so up to about a year and a half, or two years ago; the roof leaked very badly, and wet the house all over, is what I mean by bad condition, and the plastering overhead had fallen off badly when the Odd Fellows occupied the Masonic hall. I had a good deal of trouble sometimes getting the water off of the floore of that. There was a merchant oc'upied one of the stores, by name of Cohen, I think;
361 was troubled a good deal sometimes about the leaking of the house. I think after he went out the U. S. quartermaster oc'upied one of the rooms.

I don't know of every one who has oc'upied the stores having trouble, but I know that every time it rained, in the upper rooms it was very wet. The Odd-Fellows' hall at this time seems to be in bad condition; the floore is swagged down considerably, and I think the plastering is all off overhead; the northwest corner of the room is damaged by leakage, and the bricks have crumbled out. Before we went into the Odd-Fellows' hall I was one that was to see about it, and I talked to Mr. Cox,

and also to Mr. Addler, and my understanding was that we were to fix up the hall and repair it so that we could oc'upy it, and were not to pay any rent; I understood this from both the parties.

Cross-examined:

In my conversation with Mr. Cox, I think there was an understanding like this: that we were to repair the room, and were to pay no rent
362 untill the suit was settled. I think Mr. Cox said, so far as his interest went, we were perfectly welcom' to it if would fix it up, but he could only say so far as his interest extended.

Re-examined:

It was with the understanding that we were to pay no rent, that we moved out of the Masonic hall into the Odd-Fellows' hall, thinking that our only expense would consist in the repairs that we might make, untill the suit was decided. I went to Mr. Cox and told him we wanted to oc'upy the Odd-Fellows' hall; he told me that we could do so without paying rent, by repairing, and keeping the room up, so far as he was concerned; that the building was in litigation.

JOHN M. WARNER.

Attest:
W. M. STEEL, *U. S. Commissioner.*

There not being sufficient time to close the taking of depositions herein, the taking of the same is continued by consent of the att'ys herein, Mess. Byers and Cox for defendants, and Butler and
363 Miller for complainants, until the 5th instant.

W. M. STEEL, *U. S. Com'r.*

E. D. Rushing.

August the 5th, 1870, 9 o'clock a. m. The taking of depositions herein was resumed at the law-office of Mess. Byers & Cox. Present Messrs. Butler & Miller for complainants, & Byers & Cox for defendants, at which time and place was produced ENOCH D. RUSHING, a witness, to me well known to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I have known the Batesville Institute ever since it was built. I do not know when Hirsch and Addler went into the building; they were in there in 1861, say in the faul. I was here during the time Curtis had possession of this place, and also while Livingston was here. It was some time after Curtis came here that I came to town; when I came in he had possession of the building; I think it was in the summer of 1862.

They kept com'is'aryes, &c., in the building when Livingston was
364 here, which was in the winter of '63 & '64, and left here in the spring of 1864 some time, I think.

There was very little merchandise here when Curtis came here; business generally was suspended, and continued so after that time during the war generally. I returned to Batesville about the 1st day of July, 1865, after the surrender. I was authorized, at that time, to take possession of the building, and to rent it, and do the best I could. I took it into possession accordingly, and, in the faul of 1865, I rented the east store-room to a Mr. Cohen for the sum of thirty dollars p'r month. What repairs he done was to be deducted from the rent, it being in a bad condition. He continued to keep it four months for one hundred and twenty dollars, and, upon settlement with me, he produced receipts

for repairs amounting to forty-two & $\frac{65}{100}$ dollars, leaving a ballance that I collected of him of seventy-seven & $\frac{35}{100}$ dollars.

I had a difficulty with him about the money, because the house was so leakey, but I got the money. There was no other part of the building
rented by me during the year 1865. Some Federal officers had
365 some offices up-stairs. I demanded rent of them, but they would not pay it, and they continued to hold untill they left some time in the year 1866. In August, 1866, I rented the same store-room oc'upied by Cohen to Street & Martin for 3 months. They were to take it, better for worse, at forty dollars p'r month, making one hundred and twenty dollars; that is all the rents I received for the building during the time I had charge of the house. I used my best endeavors to rent the building and get all the rents I could during the time I had charge of it. The house was leakey during the time I had possession of it. There was some repairs done on it by Mr. Fraley that bettered the condition of it—the roof. I did not pay for them. I do not know who paid him. I had possession of the other store-room awhile, and repaired it considerably; put up the windows, &c. I paid no rent for it, except what repairs I done. I held it subject to rent, and would have rented
it at any time to other parties. As I stated before, the offices
366 above were oc'upied the most of the time by the Federals. The up'er back rooms were in a delapidated condition, leaking, and the plastering falling off all the time while I had possession of it, and were not fit for use. I surrendered the building to Simon Addler in late *pat* of the faul, 1866, or the spring of 1867; I do not now recollect which. The Odd-Fellows' hall, town-hall, and library-room might be fit for public purposes, but I should think they would not be fit for other purposes of business.

Cross-examined:

I think Gen'l Curtis had possession of both the store-rooms, and I cannot say as to the ballance of the building. I think Mr. Aaron Hirsch was here at that time. He had been controlling the house from the time he took possession of it up to that time when Curtis came or was in possession of it. I was here while Livingston was in town. Aaron Hirsch was here at that time, but he was not oc'upying the institute; but do not know whether he oc'upied the house from the time Curtis left
up to the time Livingston came or not. I was here but once,
367 and then a prisoner.

When I speak of business being suspended I mean that there was very little business done. I think there were some of the merchants who had a few remnants nearly all the time, but business was suspended generally. I do not know whether Curtis & Livingston's command ever paid any rent or not. The post that was kept here after the war never paid me any rent. I do not know the value of store-house rents at this time. I have been acquainted with Batesville since 1865. I think Mr. Womac has built one store, and Mr. Maxfield made some additions to another, and some other conveniences added to some others, but I know of no new store-rooms, except Womac's. In addition to that there has been some grocery store-rooms fitted up, and a silversmith' house in course of construction, and a new house, by Minikin, in course of construction, but not oc'upied.

ENOCH D. RUSHING.

Attest:
W. M. STEEL, *U. S. Commissioner.*

368 *Boyd.*

And at the same time and place was produced J. P. BOYD, a witness to me well known to be of lawful age, and after first being duly sworn, deposes and says as follows, to wit:

I have known the Batesville Institute building since the 6th day of March, 1866, that being the day I came to Batesville. I have merchandised in Batesville from that time until the 1st January, 1870. I did not know much of the building until along in October. After I came here Mr. Landager opened up a store in the house for Mr. Addler, or at least I suppose it was for Addler, and I was frequently in there after that time. Street and Martin also had a store in the building at the time. Mr. Landager oc'upied the south room, and Mr. Street and Martin the north room; the north room was in a much worse condition than the south room; the north room at the time Street & Martin oc'upied it was
369 intolerable for a stock of dry-goods. Addler came some three months after Landager came, and at every rain they had to be shifting their goods around to keep them from getting wet, or at least I saw them frequently moveing them from one place to another during rainey spells and snowey times. I know that *that* the stores were rented and oc'upied by others, but I myself would not have put a stock of goods in *it* rent free, and twenty-five dollars a month in addition thereto.

Cross-examined:

I have been renting store-house ever since I have been here in business; the two lower store-rooms at the present time, and cellars, ought to rent for twenty-five or thirty dollars a month each for store-rooms and cellar together. I paid Byers & Ruddell four hundred dollars a year. I had more room than there is in the store in the institute. I had four rooms. I had more than I wanted.

My judgement is that the main store-room in the Ruddell build-
370 ing, and the main store-room in the institute are of the same depth, or about the same; the width of the Ruddell room is somewhat the greater; they both had a counting-room, the one equal to the other, both too large, the one in the institute a little the largest. By the Ruddell building I mean the one now oc'upied by Mr. Archer. I commenced paying rent for the Rnddell building on the 27th day of January, 1866.

I do not know of any change in rents from that time until this; do not know what Archer is paying; when I moved from the Ruddell house to the Denton house I paid three hundred dollars a year for the Denton house, and Mr. Denton is paying the same rent now.

It is generally conceeded that those 3 corner stores, the Case building, the Ruddill building, and the Denton building are the best stands in town; my own opinion is that the Ruddell building is the best. I would rather have either the Case or the Denton building at the same rent than either of the store-rooms in the institute. When I
371 speak of the Case building I mean the one now oc'upied by Mess. W. E. Maxfield & Co,

To the cross-examination as to the Ruddell-Case, and Denton buildings the counsel for the complainants herein objects.

Attest. JNO. T. BOYD.

W. M. STEEL.

There not being sufficient time to finish the taking of depositions herein, the further taking is continued, by consent of counsel herein,

Messrs. Butler & Miller for complainants, Byers & Cox for defendants, until the 6th inst.

W. M. STEEL,
U. S. Commissioner.

Street.

AUGUST *the 6th*, 1870.

The further taking of depositions herein was resumed at 9 o'clock a. m. of said day at the law-office of Messrs. Byers & Cox. Att'y's present, Butler & Miller for complainants, Byers & Cox for defendants, at
372 which time and place ANTHONY STREET, a witness to me well known to be of lawful age, after being duly sworn, deposes as follows, viz:

I came here in July, 1866. Found no other house that I could rent, except a room in the institute building, suitable for merchandising, which was the purpose for which I wished to use it. I rented from Mr. Enoch Rushing, who I understood to be the agent at that time, one of the store-rooms, the rent to commence from the 1st day of August. Paid Mr. Rushing for 3 months, as I now remember. The rent that was paid afterward was paid to Mr. Simon Addler. I believe I paid him full rent for November. The next succeeding four months I paid him eighty-five dollars. For the four months he made a deduction on account of the house leaking so badly, the original rent being forty dollars per month. The roof—in the summer and early part of the fall we experienced no difficulty on account of leakage, on account of the defect of the roof; but during the later part of the
373 fall and the winter great inconvenience, and I might say loss, on account of damage to goods; so much so that I was forced to buy another building, because parties did not feel authorised to repair the roof or make a proper deduction of rents. If I had known the building I would not have given anything for it during the winter or spring or wet season. At that time I regarded it exceedingly unsafe for dry-goods. I have seen the water stand on the floor after a rain. A light rain did not produce the like effects, as it had to pass down through the up'er stories. The roof was in exceeding bad order, and Simon Addler and I had some quar'eling about the rents, but we finally compromised the last four months for eighty-five dollars.

Cross-examined:

When I came to rent a house I did not find any other store-house in town for rent but the room in the institute building.

A. STREET.

Attest:
W'M STEEL, *U. S. Commissioner.*

374 And there not being sufficient time to close the taking of depositions herein, by consent of att'ys, Mess. Butler & Miller for complainants, and Byers & Cox for defendants, to continue the further taking until the 9th inst.

AUGUST 9TH, 1870, *at 9 o'clock a. m.*

The taking depositions herein was resumed at the office of Mess. Butler and Miller. Present, Butler & Miller for complainants, Byers & Cox for defendants, at which time and place A. D. RAMSEY, a witness known to me to be of lawful age, after being duly sworn, deposes and says as follows, viz:

I have known the Batesville Institute ever since it was built. Hirsch & Addler went into the building in the summer of 1861. I was here when the Federal troops, under command of Gen'l Curtis, came here. It was 3d of May, 1862; they oc'upied the institute when they were here; I do not know w'ether they oc'upied the whole of the building or not. In the summer of 1862, some time after Gen'l Curtis
375 evacuated the place, there was a general suspension of business. I know that Hirsch and Addler auctioned of' their goods, for I attended their sale, and during that summer the merchants of Batesville generally closed out.

The command of Col. Livingston took possession of the institute when they were here the lat'er part of 1863 and the early part of 1864. The U. S. military oc'upied Batesville in 1865, and I do not now recollect whether business was resumed during that year or the spring of 1866. In some respects the rooms in the building were not in good condition on account of leaks, &c., at the time the war closed, and the gutters having been broken off the wall was somewhat damaged by the water running down. The rooms on the back end of the building were most injured. The plastering had given away badly, and the floores in the town-hall and Odd-Fellows' hall had settled on accoun' of the excessive leaking; and the leaking at subsequent period' for a time
376 was pretty bad all over the house, and continued until a new roof was put on. That part of the building known as the library-room has been oc'upied by the Episcopal church since the faul of 1866. I was a member of the vestry at that time, and there was an arrangement made for the congregation to oc'upy that room. W'eth'r I in person saw the parties and made the arrangement or not I do not know. The Episcopal congregation have never paid any rent for any portion of the time since they have oc'upied it. We have had the exclusive use of the room.

Cross-examined:

Hirsch and Addler were doing business at the time that Gen'l McBride came here during the roasting-ear time in 1862, and several of the other merchants opened up their houses after Curtis left, and did business. My recollection is that Mr. Hirsch oc'upied the office in his store-room after he auctioned off his goods, but up to what time I cannot
377 state at present. I know that he was here when Col. Livingstone came to Batesville.

A. D. RAMSEY.

Attest:
W. M. STEEL, *U. S. Commissioner.*

Gorsuch.

And at the same time and place was produced C. L. GORSUCH, a witness known to me to be of lawful age, and after being duly sworn, deposes and says as follows, to wit:

I have known the Batesville Institute since I first came to town in July, 1866, but not familiar with its condition until the spring of 1867. Mr. Addler employed me in March, 1867, to put on Johns' patent cement paint on the tin roof, and make 2 valleys of Johns' patent roofing. The roof at that time was in a very bad condition, leaking all over the house; the plastering was off generally overhead in the up'er rooms. One room, from the wasting of the brick, plastering, & morter, was in a very bad condition. I do not

378 recollect the condition of the floores then, but the floores in the town-hall and in the Odd-Fellows' hall at this time are both sunk down and in a bad condition. I know that they have been in that condition for the last two (2) years. I only have a knowledge of it since we have been oc'upying the Odd-Fellows' hall. I was ap'ointed upon a committee, as one of three, by the Odd Fellows, to as'ertain upon what conditions we could obtain the hall; and if my recollection serves me right, we called on all the parties, at least on Mr. Addler and Mr. Cox, and they said that we could oc-'upy the hall upon conditions that we would repair it and make it ten'table at our own expense, untill the suit about the institute was decided. The repairs upon the roof was one hundred and ninety-five dollars, which was paid by Mr. Addler upon the completion of the work. The plastering in the church-room is falling off all the time. As to the condition of the other rooms I cannot make any statement.

379 Cross-examined:

When I finished the repairs upon the roof in the spring of 1867, I left it in a very good condition.

When we called on Mr. Cox, I think he said, so far as his individual interest extended, they could oc'upy it, and, if the suit ended in his favor, they should pay no rent. They also called upon Mr. Addler, and received about the same statement, whereupon we took possession of the hall.

Re-examined:

After the repairs were done, in very hard, freezing weather, those valleys would still leak. Since then I think the roof has been overhauled, and partially a new roof put on.

C. L. GORSUCH.

Attest:
W. M. STEEL, *U. S. Commissioner.*

380 After the taking of the deposition of C. L. Gorsuch, by consent of counc*il*, Messrs. Butler and Miller for complainants, Byers & Cox for defendants, the further taking of depositions herein is postponed until the 15th day of August, 1870.

W. M. STEEL,
U. S. Com'r.

McGuire.

AUGUST 15TH, 1870.

The taking of depositions herein was resumed at the law-office of Mess. Butler & Miller. Att'ys present, Butler & Miller for complainants, Byers & Cox for defendants, at which time and place was produced EDWIN R. MCGUIRE, a witness known to me to be of lawful age, and after being first duly sworn, deposes and says as follows, to wit:

I was appointed commissioner by the Independence circuit court, to have the Batesville Institute repaired, to prevent further damage to the building, and I did so as best I could. I had the old roof taken off and the timbers raised and nearly a new roof put on, and I had
381 some glass put in, & had some new sash made and put in. I had the work done in 1867 & 1868, completed about the 1st October, 1868. I am not positive as to having any work done in 1867. The roof was the last work done on the building, and was completeed about the 1st October, 1868.

The condition of the building when I went to work on it was bad. The roof leaked very badly, and the windows in the up'er stories were nearly all out or a great many of them were out.

I do not think the building could have been rented to much advantage. I should not have wanted to have paid much rent for it in the condition it was then in. The roof I had put on was tin. I think it leaks a little in some places once in awhile, but not to amount to much. The amount of repairs which I had put on the building was about thirteen hundred & forty dollars, ($1,340.00,) including the allowance made by the court. Simon Addler has made satisfactory
382 arrangements about the amount.

Cross-examined:

The building has been rented nearly all the time, notwithstanding its condition, and you might say all the time, for Addler has been in it all the time since 1866. Since the repairs that I had put on the building I consider it in as good repair as buildings usually are.

Re-examined:

In speaking of the buildings being oc'upied, I mean some portions of it have been oc'upied all the time, and not the entire building.

E. R. McGUIRE.

Attest:
W. M. STEEL,
U. S. Com'r.

AUGUST 15, 1870.

By consent of att'ys herein, Mess. Butler & Miller for complainants, & Byers & Cox for defendants, the further taking of depositions herein is postponed until Aug. 16, 1870.

W. M. STEEL,
U. S. Com'r.

383 *Clendenin.*

August 16, 1870, at 9 o'clock a. m., the taking of depositions herein was resumed at the law-office of Mess. Byers & Cox. Att'ys present, Butler & Miller for complainants, & Byers & Co. for defendants, at which time and place was produced JOHN P. CLENDENIN, known to me to be a witness of lawful age, and after being duly sworn, deposes and says as follows, to wit:

I think the Episcopal congregation took possession of the library-room in the institute in the fa*u*l of 1866 or the spring of 1867. We made some repairs to the room, had the plastering patched, &c.

When the question of rent was discussed in the vestry, Mr. Cox said as far as he was concerned it would cost us nothing. I have been both clerk and treasurer of the vestry until this year, and Mr. Addler has never demanded of me any rent. At the time of the conversa-
384 tion referred to above, Mr. Cox was a member of the vestry.

Cross-examined:

I think it was in the fa*u*l of 1866 that the Episcopal congregation went into the library-room in the institute, but I will not be positive; this conversation took place after we had moved into the room. I do not know upon what terms they oc upied the room up to that time.

In the conversation, as before named, in which Mr. Cox was present,

he stated that he had bought the building, and *and* it was in litigation, &, so far as he was concerned, the church would have to pay no rent.

Re-examined:

I think this conversation was, say in April, 1867, shortly after Mr. Cox had bought the building.

JOHN P. CLENDENIN.

Attest:
W. M. STEEL, *U. S. Com'r.*

385 STATE OF ARKANSAS,
County of Independence:

I, William M. Steel, an acting and duly commissioned United States commissioner in and for the eastern district of Arkansas, do hereby certify that the foregoing depositions were taken before me on the days and between the hours, and at the place in the captions thereof above mentioned; that the examinations and statements of each of said deponents were reduced to writing by me, and by the deponents respectively sworn to and subscribed in my presence.

In testimony whereof I have hereto set my hand, this 16 , 1870.

W. M. STEEL,
As U. S. Commissioner.

386 United States district court, eastern district of Arkansas, before the clerk in vacation, June 18, A. D. 1870.

M. KAUFMAN & Co.
versus
BATESVILLE INSTITUTE. } Ch'c'y.

And now on this day come into the clerk's office said complainants, by Watkins & Rose, their solicitors, and on their motion it is ordered that said compl'ts have leave to take the depositions of witnesses generally, before any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, to be read in evidence on the trial of this cause.

Attest: CHA'S P. REDMOND, *Clerk*,
P'r R. L. GOODRICH, *D. C.*

A true copy from the record.
Attest: CHA'S P. REDMOND, *Clerk*,
P'r R. L. GOODRICH, *D. C.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States of America to any judge, justice of the peace, notary public, or United States commissioner for any of the States or Territories of the United States, greeting:

You are hereby commanded to cause to come before you all witnesses whatever, and them diligently examine, as well on the part of the compl'ts as of the defendants, in a certain suit now pending in our district court for the eastern district of Arkansas, in which M. Kaufman & Co. and Batesville *is* defendant', and that you then and there examine them apart, upon their respective corporeal oaths

first taken before you upon the Holy Evangelists, and that you reduce their examinations to writing, and when you shall have so taken them, that you send the same, with this dedimus, closed up under your seal, to our said district court, at the city of Little Rock, without delay.

In testimony whereof Hon. Henry C. Caldwell, district judge of the United States for said district, has caused the seal of said district court to be hereunto affixed, this 18th day of June, A. D. 1870, and of American independence the 94th year.

[SEAL.] Attest: CHA'S P. REDMOND, *Clerk*,
Per R. L. GOODRICH, *D. C.*

Filed Jan'y 2d, 1871.

FRANK E. WRIGHT, *Clerk*.

387 *Agreement for depositions.*

In the United States circuit court for the eastern district of Arkansas.

M. KAUFMAN & CO., PLAINTIFFS,
vs.
BATESVILLE INSTITUTE ET AL., DEFENDANTS.

The undersigned, counsel in the above case, agree that depositions may be taken in the above cause between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, on the 23d day of July, 1869, at the counting-room of M. Kaufman & Co., in the city of New Orleans, and State of Louisiana, without any commission, before any officer qualified by law to take the same, and that the taking of the same may be continued at the same place, between the same hours, from day to day until completed, reserving all questions of relevancy or competency.

WATKINS & ROSE, *Attorney' for Plaintiffs.*
GARLAND & NASH, *Attorney' for Defendants.*

388 I reside at present in the city of New Orleans, State of Louisiana. I am the surviving partner of the firm of Hirsch & Adler, formerly residing and doing business in Batesville, Independence Co., State of Arkansas.

Some time before the year 1859, the old Batesville Institute was destroyed by fire; a short time thereafter Mr. Byers got up a subscription-list for the purpose of raising means to rebuild the institute under a new company.

Mr. Byers and myself had many conversations on the subject; he knew that I was favorably inclined to aid every undertaking which micht result to the benefit of our town.

I then took stock, the amount of which I do not now remember; the amount of good cash stock subscribed I do not believe was over three thousand dollars. Byers, Ruddle, and Cox, had the principal stock, but it was not cash. I think their stock was about three thousand dol-
389 lars, for the payment of which they, the said Byers, Ruddell, & Cox made over to the new company the ground the old Batesville Institute stood on. The said Byers, Ruddle, and Cox made an instrument of writing, by which they renounced all claims against the said ground; they also bound themselves to pay all debts which might be unpaid against the old institute and ground. A copy of this instrument of writing I have in my possession, and original was recorded in Batesville at the time it was made.

Most of the stock taken was never paid; I remember Womack & Welch, the contractors complaining often, because the' could not get what was due them. I do not believe that half of the first and second payments promised Warmack & Welsh was ever paid them.

The efforts made by Mr. Byers to obtain sufficient stock subscription wholly failed; he, nevertheless, as president of the New Batesville Institute, entered into a contract with John E. Womack and Thomas
390 Welsh, under the firm of Womack & Welsh, to rebuild the institute at a cost of about $16,800.00, (sixteen thousand and eight hundred dollars,) and so the matter stood when Womack & Welsh beganto rebuild the said institute about, or some time, in the year 1859, after which repeated efforts were made to obtain additional stock subscribed by parties who were able to pay. The few stockholders who took any interest in the matter hoped to obtain at least 6 or 8 thousand dollars additional good stock, in order to enable the corporation of the institute to comply with the contract made with Womack & Welsh, the said contractors hoping and trusting in Providence for the residue which might become due the said contractors, but all efforts of Byers and others failed; there was, therefore, no reasonable hope that Womack & Welsh would be paid at all; this was in the year 1860, afte which no more attempts were made to raise any funds for that purpose.

391 It was generrally known that Womack & Welsh, the contractors, had entered into the contract under the promises made by W. Byers to raise sufficient means. The said Womack & Welsh began the building of said institute accordingly, and left the responsibility with W. Byers to make good to said contractors the sums they may get from other parties, in order to enable them to build the institute.

There was a general suspicion among the stockholders a few months after the beginning building the said institute that the amount necessary to be raised according to contract was so large that it was almost next to impossible to raise the means in such a poor section of the country, therefor' the few good stockholders who were able and willing to pay, and who had each but a small amount of stock, were perfectly resigned to the loss of their stock, considering that they were amply paid in having such a building erected as the institute. They did not care with what means the erection of the same might be effected, which
392 was expected to enhance the value of their town property.

The result of all this was that W'm Byers, having prevailed upon Womack and Welsh to undertake the contract before said Byers was certain that even one-third of the contract-money of the 16,800.00 could be obtained for the purpose of rebuilding said institute, and W'm Byers, seeing the utter impossibility of keeping good faith with Womack & Welsh, said contractors naturally came to me as the only one person then residing in Batesville liberal enough to aid him, s'd Byers, and Womack & Welsh, to continue and finish the said institute.

Some time before, or short time after the beginning of the building the said institute, I commenced advancing money and goods to Womack & Welsh, said contractors, in order to enable them to make contracts for material necessary, which advances ran up to four thousand dollars, on the 10th day of December, 1859, for which said Womack and
393 Welsh gave us their joint note and mortgage on their property to secure said debt; the said property, to the best of my recollection, was not worth one-half the money represented in above said note.

Some time in the beginning of the year 1860, when everybody saw clearly that there was no chance or hope for the corporation of the Batesville Institute to raise sufficient funds to secure said Womack & Welsh,

contractors, naturally said Womack & Welsh were alarmed, because they had risked their homesteads in undertaking to build the institute upon nothing more than the promises from W. Byers, but as they had progressed so far they could not stop without utter ruin to themselves and families. The result was, that Womack and Welsh called on W. Byers as pres'*d* of said institute, to ask said Byers to see this deponent on the subject of raising means to enable them to continue work on said building, and to get said Byers to make the deponent such promises as would induce me to advance to said contractors whatever sums m*ay* be
394 needed to continue said building. Thereupon W. Byers called upon me and explained how matters stood in relation to the institute. He, the said Byers, acknowledged then to me that there was no chance to obtain additional stock subscribed to comply with the contract into with Wormack & Welsh, and said W. Byers said to the deponent amongst many other inducements, that if we would advance the necessary funds to the said Womack & Welsh, to enable them to finish the building, that he would consider himself in duty bound to protect us, and would induce said Wormak & Welsh to have their mechanics' lien filed which might be turned over to us; and the said Byers further stated that we would under such an arrangement run no risk, because the Batesville Institute would stand good for all we had advanced or might hereafter advance. Under these promises, especially of W. Byers as president of said institute, we consented and promised to advance means to enable Wormack & Welsh to continue & finish said in-
395 stitute. The promises of Womack and Welsh would not have induced the deponent to advance such large sums to said Womack & Welsh, but only upon the faith of said promises of said W. Byers, as president, did we consent to make such large advances. After this conversation and understanding we continued to advance all that was necessary or ever demanded of us by the said Womack & Welsh, contractors, until the completion of the said Batesville Institute.

The Batesville Institute was finished about December, in the year 1860, and in January, in the year 1861, Womack & Welsh filed their mechanics' lien and obtained judgement against the said Batesville Institute for the amount due said Womack & Welsh; as the amount of that judgement was then due the said Womack & Welsh, contractors, no objection could have been made, and no objection was made by any one, and this judgement was considered by me, as well as by every one else, a final adjustment of the amount due said Womack & Welsh at the time said judgment was rendered.

396 I am positively certain that W. Byers is mistaken in what he states in his deposition before the Hon. E. Baxter in this case; W. Byers states as follows:

"That he first refused to let judgement go against the Batesville Institute, because it was not finished; that the amount was not due, and in letting judgement go, it might waive the right of the institute under contract, and that if he would consent that judgement should go, that he should not waive any right which the institute had under contract; and the said Aaron Hirsch, in behalf of Hirsch & Adler, promis*ed* me as president of the institute, that if Womack & Welsh would not finish the building, that they, Hirsch & Adler, would have it done, I consented that said judgement might be rendered."

I have shown in my narration of this my deposition how utterly inconsistent a proceeding, as above quoted, on the part of W. Byers would have been at the time the judgement in favor of Womack & Welsh was rendered. It was known by no one better than said W.
397 Byers that, in view of the inability of the Batesville Institute or

its president to comply with the contract entered into with Womack & Welsh, *that* no one of the stockholders dreamed of opposing the rendering of this judgement. W. Byers not only did not oppose the rendering of this judgement in favor of Womack & Welsh, as president or otherwise, but, on the contrary, aided us in having said judgement as rendered; no objections *was* made by the said W. Byers for any cause whatever. I never promised W. Byers, as president or otherwise, to finish the Batesville Institute, neither did the said Byers ever ask*ed* me to make him said promise*s* or anything like it.

After the transferring of the contractors' mechanics' lien to Hirsch & Adler, to secure what we had advanced them, there was no objection from any quarter, but, on the contrary, it was generally taken for granted, as the corporation of the Batesville Institute was unable to pay as they contracted for, the institute would be good then for our claims against it. The only matter spoken of in regard to
398 the institute at that time or after until I left Batesville in June, 1864, was that Hirsch & Adler owned the institute. W'm Byers and myself had frequent conversation' relative to the institute after the judgement was rendered, but he only spoke of an arrangement intended to be made with Hirsch & Adler, by which the Masons might be enabled to keep possession of their hall, either free from rent or such small amount which they might be able to pay.

There was the best of feeling between the stockholders of the institute, including Byers, Ruddell, & Cox, and Hirsch & Adler. They all knew that the deponent, who controlled the business of Hirsch & Adler, would make any arrangements with the stockholders which would be perfectly satisfactory to them whenever they would come forward for the purpose.

It was not the intention or aim of the Batesville Institute corporation to build the new institute for the purpose of gain. Most all
399 the parties who any stock were Freemasons, and it was for the purpose to obtain by these building a hall sufficiently large to meet in free of rent.

No such an amount as 16,800.00 could have expen*t*ed in the erection of any kind of building in such a small place as Batesville could have been sold when finished in the very best style for half the money it cost to erect it. This was one of the many reasons why the stockholders did not care to take any additional stock to enable the Batesville Institute corporation to comply with their contract. No effor*d* of any kind was made by the stockholders or their president during the 3 or 4 years after the completion of the said institute to dispute the rights of the said Womack & Welsh or Hirsch & Adler.

After the completion of the said institute, about the early part of the year 1861, Womack & Welsh, said contractors, asked the deponent to take possession of the Batesville Institute, to remove our stock of
400 goods into it for the purpose of protecting the same from fire. Mr. John E. Womack, the ma'ging partner of Womack & Welsh, particularly insisted that we should move into the said institute on account of our claim on the same. We were then occupying and doing business directly opposite the said institute in two store-houses owned by ourselves. The deponent said to Womack & Welsh that if we remove to the institute, we could not rent our own two store-houses, because there was no demand for any. The said Womack & Welsh replied that rent in this case was out of the question. All they wanted was to have a party occupy said institute to protect it, especially ourselves, who in all probability would own the said institute, because the corporation or said institute was entirely unable to comply with their contract. Under

such an arrangement & understanding, we removed into the said institute. During the 3 or 4 years from 1861 to 1864, up to the time I left Batesville, I do not think that we rec'd (50.00) fifty dollars rent
401 from the houses we had left for these 3 or 4 years together. We occupied the two lower rooms of the Batesville Institute; the rent of the same might have been worth for the years 1861, 1862, 1863, and 1864, perhaps six hundred dollars a year, considering the peculiar state of affairs during most of the time.

The deponent would have cheerfully given up the said institute rooms we occupied, if any one would have wanted *it* & would have been able to pay any rent at all, especially in 1863 & 1864. I do not think that we received altogether, from the time we took possession of said institute to *th*ime the deponent left Batesville, a hundred dollars in rent. The Masons nor Odd Fellows who occupied the principal rooms in the upper stories paid any rent. I understand that Simon Adler, residing at Batesville, who is acting as agent, rec'd some rent which he paid out to repair said institute by an order from the court.

402 I do not remember the amount we paid for repairing the said *said* institute up to the time deponent left, but I suppose it might have been between four and five hundred dollars.

The soldiers of the Confederate States army abused the institute more than any other cause, because they took tin from the roof and other places for the purpose of making tin cups or canteens; this deponent could not prevent this. Mess. Byers and Fraley both knew of this occurrence, but failed to say so. The longest time the Batesville Institute was occupied was by the officers under command of Col. Livingston. I made all effor*d*s possible to obtain rent, but never succeeded in getting any. A quartermaster of the command refferred my account for rent to the chief quartermaster, then stationed in Little Rock, who returned the account favorably endorsed, but Col. Livingston would
403 never allow the quartermaster to pay me. Col. Livingston said to me that I was not sufficiently loyal to entitle me to receive any rent.

David S. Fraley, in his deposition, says he thinks we rec'd rent, because he got rent. I presume the reason was that he was considered sufficiently loyal, because he *having* served in the army of the Confederate States the first 2 years of the war as a commissary or quartermaster, after which time he joined the Federal Army, which accounts for the difference between us as regards the receiving of rents.

The following is a true copy of the account of Womack & Welsh, John E. Womack and Tho's Welsh individually, as appears in the old ledger of Hirsch & Adler:

Womack & Welsh to Hirsch & Adler.

	Dr.
To sundries up to Dec. 10, 1859..	$4,000 00
To sundries, during Dec., 1859..	$475 31
To sund's during the year 1860..	7,188 35
Total am't	$7,663 66

404

	Cr.
Dec. 10, 1859, by note.....	4,000 00
	Cr.
By building a house at Jacksonport.....	$3,500 00
Less Hirsch, Adler & Co.'s account for furnishing material & paying workmen at Jacksonport.....	3,358 06
Bal. due W. & W.....	$141 94
By sund's at Batesville.....	721 34
	$863 28
By note dated Jan'y 1st, 1861....	6,800 38
	$7,663 66

These accounts, for which the notes of $4,000.00 and $6,800.38 were given, was for money, goods, materials furnished, and paying off hands, all for the benefit of the institute and to enable said Womack & Welsh to build the same; possibly there might have been a few hundred dollars for other purposes, but I do not think so, because Womack & Welsh had each a separate account, as follows:

John E. Womack to Hirsch & Adler.

			Cr.
To note Jan'y 1, 1859.....	$707 30	By am't rec'd from Dougherty...	500 00
Acc't years 1859 & 1860.....	963 19	By sund's	75 00
		Do.	207 03
	$1,670 49	Do.	307 11
Bal. credited Womack & Welsh.	418 92	Jan'y 1, 1860, by W. Byers assumed.....	1,000 00
	$2,089 41		$2,089 41

405 The above am't of $418.92, due Womack, was transferred to the account of Womack & Welsh, as it will appear in the credits of $721.34.

Thomas Welsh to Hirsch & Adler.

To balance, year 1861, $243.73, on which there *is* no credits.

Thus it will be seen that the 1,000 dollars referred to by Mr. Byers, "that he knew at least a thousand dollars which he paid Hirsch & Adler for Womack & Welsh," was credited to John E. Womack individually, because, first, said J. E. Womack owed us an account individually.

2nd'y. Mr. Womack wanted it so credited, saying that W. Byers owed him that much individually. For further certainty about this matter, I here quote from a letter writen by W. Byers, addressed to the deponent, saying, amongst other matters, that "the old institute was indebted to John E. Womack one thousand dollars, for which he took stock in the new institute. I then promised him, if Womack was unable to keep the said stock, that I would retake the same from him."

406 Mr. Byers then says if the deponent would credit Mr. Womack with the thousand dollars, and charge the same to him, that he would pay as soon as he could, &c. The thousand dollars was accordingly passed to the credit of said Womack, as shown in said Womack's account.

The new Batesville Institute could therefore not have been built with the old debts of the old institute, nor with flour, meal, and other eatables furnished, as W. Byers said he did furnish to said Womack & Welsh, when in all probability said flours and other articles were paid said Womack & Welsh for work done for said Byers on his mill and other places, and with what flour and meal the said Womack & Welsh paid off their workmen, who aided them in so working for the said Byers.

And further this deponent sayeth not.

A. HIRSCH.

407 STATE OF LOUISIANA,
City of New Orleans:

I, Andrew Hero, jr., a commissioner of Arkansas in & for Louisiana, do certify that on this day the above-named Aaron Hirsch *and* did depose and swear that he wrote and subscribed the foregoing deposition on the twenty-third day of July, A. D. 1869, at the counting-room

of M. Kaufman & Co., and that the statements therein contained are true.

As witness my hand & seal at New Orleans this thirtieth of July, A. D. 1869.

ANDREW HERO, JR.,
Commissioner.

And on the 10th day of May, A. D. 1871, came Garland & Nash, solicitors for defendants, filed their bond for appeal, which is in the words and figures following, to wit:

Know all men by these presents, that we William J. Erwen as principal, and William Byers and William B. Ruddell, as his securities, all of Independence County, State of Arkansas, acknowledge ourselves to jointly and severally owe and be indebted to M. Kaufman & Co., said firm composed of Max Kaufman, Lewis Kaufman, and Calvin
408 Hirsch, in the just and full sum of one thousand dollars,($1,000.00,) for the payment whereof well and truly to be made we do hereby bind ourselves, each and all of us, our administrators and our heirs respectively, conditioned, however, that whereas the Batesville Institute and William J. Erwin, as administrator of Thomas Cox, deceased, are about to take an appeal from the circuit court of the United States for the eastern district of Arkansas to the Supreme Court of the United States, upon a decree rendered in & by such circuit court in chancery on a bill filed by said Kaufman & Co. against the said Batesville Institute, Thomas Cox, John E. Womack, John Campbell and Sarah his wife, Thomas Welch, and William Welch:

Now, if the said Batesville Institute, and the said William J. Erwin as such administrator, shall prosecute their said appeal to effect, and answer all costs if they should fail to make the same good, then this bond to be void.

Witness our hands and seals this the day of April, 1871.

W. J. ERWIN. [SEAL.]
W. BYERS. [SEAL.]
W. B. RUDDELL. [SEAL.]

409 Approved at Batesville, Ark's, this 29 day of April, 1871.

W. M. STEEL,
As U. S. Commissioner for East. Dis't Ark's.

Approved:

HENRY C. CALDWELL,
Dist. Judge.

Filed May 10, 1871.

FRANK E. WRIGHT, *Clerk.*

Received of A. H. Garland on the foregoing transcript one hundred dollars, ($100.)

FRANK E. WRIGHT, *Clerk.*

410 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Frank E. Wright, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct,

and compared copies of their originals on file and remaining of record in my office, and constitute a complete record of said cause.

In witness whereof I have hereunto set my hand and the seal of said court this 26th day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-sixth.

[SEAL.] Attest: FRANK E. WRIGHT, *Clerk.*

(Indorsement on cover:) No. 576. The Batesville Institute and William J. Erwin, adm'r of Thomas Cox, dec'd, appellant, *vs.* Max Kaufman, L. Kaufman, and C. Hirsch, as Max Kaufman & Co. E. Arkansas C. C. U. S. Filed 3d January, 1872.

Supreme Court of the United States.

OCTOBER TERM, 1873.

THE BATESVILLE INSTITUTE ET AL., *appellants*,
vs.
KAUFMAN ET AL., *appellees*. } No.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANTS.

Womack & Welch were adjudged creditors of the Batesville Institute, and entitled to a lien on the same to enforce payment of their claim, which was, according to the averments in the bill, $12,491 67 debt, and $124 90 interest thereon, on the 15th day of January, 1861, when the judgment was rendered in the circuit court of Independence county, Arkansas. Womack & Welch being indebted to Hirsch & Adler, made a deed of trust to W. E. Gibbs, trustee, of this lien for their benefit. Hirsch & Adler assigned the notes, as well as the deed of trust of Womack & Welch, to M. Kaufman & Co., appellees. Before the filing of this bill, which was in March, 1868, Gibbs, the trustee, had died, and no one was ever substituted in his place. M. Kaufman & Co. filed this bill to enforce payment of their debt through this lien and deed of trust. (See *Trans.*, pp. 1–9.)

At the appearance term, Thomas Cox and the Batesville Institute filed a demurrer to the bill, which was argued, and by the court overruled. (*Trans.*, pp. 9–12.)

The first error presented and to be assigned is the over-

ruling the demurrer of Cox and the Institute. The sixth ground of demurrer was removed by an amendment to the bill. (*Trans.*, p. 11.) The other five are relied upon, and they are as follows:

1. The mere assignment of the notes by Hirsch & Adler to complainants did not vest in them a right and title to the judgment on the mechanic's lien of Womack & Welch. In other words, there is no assignment of this judgment so as to enable Kaufman & Co. to file a bill in their own names, but they should have sued in the names of H. & A. for their use and benefit, or should have made H. & A. defendants, so as to have completed the assignment, and to have had themselves subrogated to their (H. & A.'s) rights. And H. & A. are in any view *indispensable* parties. (See *Story's Eq. Pls.*, §§ 153, 154; 6 *Paige*, 597; 5 *Paige*, 539; 1 *Johns. Ch. R.*, 339; 2 *Johns. Ch. R.*, 394; *Gartland* v. *Nunn*, 11 *Arks. R.*, 721; *Porter* v. *Clements*, 3 *Arks. R.*, 364.) Without this is done, a decree giving to all interested their rights cannot be rendered. (*Varney* v. *Bartlett*, 5 *Wisconsin*, 270.) This is a valid objection then to the right of K. & Co. to sue; and the defect of parties is also fatal.

2. That some one representing Gibbs should be made a party, or that the court should be called on to appoint some one to execute the trust in the assignment made to Gibbs there can be no question. (*Story's Eq. Pls.*, §§ 148, 152, 171, 184, 200, 216; *Hill on Trustees*, 2d *Amer. ed.*, *303, *notes a and* 1.

3. The whole foundation of this suit is the judgment on the mechanic's lien, which was filed according to the laws of Arkansas on the 15th January, A. D. 1861. (*Gould's Dig.*, *Arks.*, *p.* 768, *ch.* 112, *sec.* 4.) And it is apparent on the face of the bill that this lien is lost on account of the lapse of time, there being more than three years from the date of this lien to the filing of the bill. (*Gould's Dig.*, *p.* 633, *ch.* 96, *sec.* 5; *Trapnall* v. *Richardson*, 13 *Arks.*, 544; *Lawson* v. *Jordon*, 19 *ib.*, 297.) And there is no showing whatever that this lien could not have been enforced long since. It stands then, supposing that K. & Co. had any

rights here at all, as a stale and barred claim; and after this delay a court of equity will not give its aid without the strictest and best showing why this delay occurred. The laches here apparent would excite the distrust of the court without even the statute law. (7 *How., U. S., Wagner* v. *Baird; Story's Eq. Juris.*, 7 *ed.*, § 1520, *note* 4; 8 *Peters*, 420; 8 *Cranch*, 471; 17 *How., U. S.*, 340.)

4. This suit is in truth to revive a judgment that is barred, to subrogate K. & Co. to the rights of others, to set aside a conveyance of the property, and to decree this property subject to the debt claimed by K. & Co. It does not appear that K. & Co. are on the record in the State court in the judgment, nor is that judgment assigned to them, nor does there appear to be any semblance of an assignment. The State court rendered the judgment and in that court the remedy must be sought, as the court which first gets jurisdiction always settles the whole cause. The State court must be presumed fully competent to do ample justice to all interested in this suit already pending and existing before it. It is a matter before a competent court, which the United States court could not interfere with or take charge of. (24 *How.*, 385; *ib.*, 450; 21 *ib.*, 506; 10 *Peters*, 400; 2 *Kent*, 122–125; Riggs *v.* Jackson County, 6 Wall., 196.) This objection has peculiar force here, as K. & Co. show no legal interest whatever. There must be a clear showing to justify the United States court in assuming jurisdiction over a matter begun and almost concluded in the State court, and that by a party who has no interest on the record of the State court. In view of the familiar rule that everything must appear on the record to give the United States court jurisdiction, (*Conkling Tr.*, 4*th ed.*, 343,) this bill should not have been entertained. It is true, indeed, that the United States court would aid a State court, or rather give a remedy in aid of proceedings in a State court, on a proper case; but the party must show his own right clearly and fully, and then why his remedy cannot be enforced in the State court. (*Conkling's Sup.; ib.*, 272; 2 *Story's R.*, 589; 3 *Sumner's R.*, 425–429.)

The case in 2 *Sumner*, 589, was excepted out of the operation of this rule, or rather was brought under the operation of another rule, which held the admiralty lien paramount, and therefore confirmed jurisdiction. (See 24 *Penn.*—12 Harris—259; *S. C.* 20 *How.*, 591.) In the case last cited the dissenting opinion, powerful and overwhelming as it is, does not combat the principle here advanced, but rests upon the ground that there was no conflict, and could be none, as the State court proceeded in that matter, without jurisdiction, as the admiralty feature of the case placed the jurisdiction elsewhere. Even under this dissenting opinion the position here claimed is sustained, as, if in that case (20 *How.*) the State court had been competent to determine it, the United States court could not have touched it. Then, without some showing, not yet made, why this case was lifted out of the State court and placed in another and different jurisdiction, the suit cannot be upheld, but must be dismissed.

The remedy to enforce the mechanic's lien is a legal one, and is amply given and provided for by the State statute. There is not a single feature in this bill that brings it within the jurisdiction of equity. No trustee is asked to be appointed; no assignment is sought to be perfected; in fact nothing is asked by way of collecting this claim that could not be done as well at law, and this being true, the court below had no jurisdiction, and this point is expressly relied on in Womack's answer. (*Trans.*, p. 28.)

Cox and the Institute rested upon the demurrer; a decree was taken against certain defendants who failed to answer; and William Welch, a minor, by guardian *ad litem*, put in the usual answer. (*Trans.*, pp. 11, 12.)

John E. Womack, of the firm of Womack & Welch, was afterwards served with process, and on 3d day of August, 1868, filed his answer to the bill. (*Trans.*, p. 14.)

This answer sets up positively payment of the debt or debts claimed by K. & Co., and if not a payment direct, they were discharged, or would have been, by a full and proper accounting of Hirsch & Adler and those holding

under them, for the rents and profits of the buildings of the Institute, held by them for several years. To determine these questions of fact, many depositions were taken and read on both sides; and by reference to them, an abstract of which is made in this brief, the court will see at a glance there was in equity no claim due K. & Co. when this bill was filed.

Depositions for K. & Co. (*Trans.*, pp. 108–128.)

First witness—Simon Adler.

They prove by him, agent for plaintiffs, the amount paid out for repairs, taxes, &c., at $2,518 40, and rents he has received $3,695 38, (a PERFECT *farce*,) and also prove what *he thinks* to be a fair rent for the store-rooms and cellars, $25 per month, now, each, and tries to show that Hirsch & Adler did not occupy the house but a few months after General Curtis left here in June, 1862; but says they (Hirsch & Adler) *moved out of the Institute when Col. Livingston came to Batesville, and moved into the small frame house across the street.* This is proved to be on 25th December, A. D. 1863, eighteen months after General Curtis left here. If they did not occupy the house, how could they move out when Col. Livingston came in? and Livingston remained here until May, 1864; and Mr. Hirsch, it is shown by Campbell, Fraley, and others, occupied part of the house, stored cotton, &c., in the cellars, while Livingston was here, up to May, 1864; and in May, 1865, we again hear of E. D. Russhing, as agent of Hirsch & Adler, having possession of the house and renting the same, &c. So there could not possibly be more than one year that the house was not occupied, and during all this time it was under the control of Hirsch & Adler, and we think they should pay the rents, as it was in their charge.

Second witness—Mr. Maccanany.

Testifies he occupied one end of the town hall for five months with printing-press and material weighing from four to five thousand pounds, and paid $15 per month.

House in rather bad condition and thought unsafe, and moved out on account of leaking, &c.; that he thinks the house should rent for from $1,000 to $1,500 per annum.

This shows if Hirsch & Adler had kept the house in repairs there would have been no trouble in finding tenants at a good price. He paid $15 per month for the half of the town hall, which they wish to show is not such a room as could be rented in this place.

Third witness—Taylor A. Baxter.

Testifies to the general bad condition of the building since the late war, but nothing further bearing on the case except as to rents, which he thinks worth $700.

And then, on summing up the rents, he says each store-room and cellar is worth $300 per annum.

2 store-rooms and cellars at $300 per annum each.	$600 00
Odd-Fellows' Hall	100 00
3 offices, worth	120 00
Church room	60 00
Making in all	$880 00

Cannot say what town hall is worth, and he puts three offices at $120 per annum, and two (2) out of the three (3) are now rented at $144. *Well he might say he was not acquainted with the price of rents in Batesville.*

Fourth witness—W. H. Rosa.

He also testifies to the bad condition of the house, and its being occupied by General Curtis, Col. Livingston, &c.; and further shows that he has been occupying same part of the building since 1865, and that the United States paid $40 per month for one store-room and cellar, and $17 50 per month each for two offices, from about 1st April, 1867, to April, 1869. At this rate one store-room and cellar and two offices rented for $900 per year, and the two years came to $1,800. And it is proven that Mr. Simon Adler all this time occupied the other store-room and cellar, and says it was only worth $25 per month, when he had choice of

rooms and cellar. Let us see what the building was worth from April, 1867, to April, 1869, according to this rate of rents:

For two (2) offices and one store-room and cellar the United States paid $900 per annum	$1,800 00
Simon Adler, one store-room and cellar, at $40 per month, $480 per annum	960 00
One other office at $17 50 per month, making $210 per annum	420 00
We will put church room at same rate, though much larger room	420 00
Town hall at same	420 00
Odd-Fellows' hall at $100 per annum	200 00
For two years	$4,220 00
For one year	$2,110 00

But we will take Mr. Rosa's own estimate of rents. He says each store-room and cellar attached is worth from $30 to $35 per month.

At $35 per month, the two are worth per annum,	$840 00
One office, per annum	60 00
One " " "	60 00
Two " " " at $48 each	96 00
	$1,056 00

Odd-Fellows' hall, town hall, and church room, not put in the estimate; other witnesses say these rooms are worth—

Town hall	200 00
Church room	100 00
Odd-Fellows' hall	100 00
Makes a total of	$1,456 00

And he is not acquainted with rents *in Batesville.*

Fifth witness—T. Maxfield.

Says he occupies the west store-room and cellar, and

pays $25 per month, all he was willing to give under the circumstances, &c., but says it is a better room than the one he left at same price, and even a better room than the one W. E. Maxfield & Co. occupy, for which they pay $400 per annum.

Sixth witness—Philip Turner.

Says he has known the building for four years, and was in bad condition till repaired. He would have been afraid of being sued for damages for renting such rooms to any person to occupy before repairs were made; thinks $25 per month a fair rent for the store-rooms, although he pays $25 per month in a box-house by side of the Institute, which is a brick building, and one room in the Institute is larger than both of his; does not know what the building was worth before the war, but swears that Street & Martin and the United States occupied it before new roof was put on.

Seventh witness—Robert C. Bates, deputy clerk.

Says he knows there are four suits pending in court about the property.

Eighth witness—John M. Warner.

Testifies he has known the Batesville Institute since it was built; that Aaron Hirsch remained here and went off with Livingston. Proves that Cox said the Odd Fellows should pay no rents, so far as he was interested, &c.; that the building was in litigation.

Ninth witness—E. D. Russhing.

Proves he acted as agent for Hirsch & Adler in 1865 and part of 1866; he rented east store-room to Cohen for $30 per month in the fall of 1865. Room in bad condition; kept it four months; United States had offices, &c. He also, in 1866, rented same store-room to Street & Martin, to take it just as it was, good or bad, at $40 per month; they paid me $130; did best he could to rent the house, and it was out of repair, but says nothing as to the value of rents, &c.

Tenth witness—John P. Boyd.

Testifies he knows the building; knew but little about it till occupied by Landecker in October, 1866, and he (*Landecker*) brought goods for Simon Adler and occupied the south room, (what others call the west room.) Street & Martin had the north room, (what other witnesses term east room,) and says the north room, occupied by Street & Martin, was in much worse condition than the one occupied by Landecker for Simon Adler. (Street says they paid $40 per month for three months, and then paid $85 for four months more,) and he seems to think $300 per year enough for the store-room and cellar.

Eleventh witness—Anthony Street.

Came here in July, 1866, and rented the store-room from Russhing, and it was the only room in town suitable for business; paid $40 per month for store-room and cellar; I afterwards, in fall and winter, paid $85 for four months' rent, owing to the leakage in wet season, and says the house was in bad repair, and Simon Adler, or those in charge, would not repair the house; the result was he had to move out, &c. (This further shows a total violation of their agreement, and they should be held to pay for failing to perform their part of the contract.

Twelfth witness—Allen D. Ramsey.

Testifies to nothing that we think very material, only bad condition of the house and the occupation of church room, and that the church pays, or has not paid, any rent, &c. (This is nothing to appellants. If the appellees or their agents see proper to give the church the rent, if they are charitable, they must be so at their own expense.)

Thirteenth witness—C. L. Gorsuch.

Testifies also to the bad condition of the house, and that he repaired the house, and he was one of the committee to get Odd-Fellows' hall, and they were to repair room for rents, &c., but Cox said so far as he was concerned the Odd

Fellows could repair hall and occupy it, &c. *Says nothing about value of rents.*

Fourteenth witness—E. R. McGuire.

Testifies he was appointed receiver, and repaired the house in October, 1868, and paid out $1,340 for repairs in all, and Simon Adler paid him this amount, and that the house is in good repair since October, 1868, when new roof was finished, &c., and he knows the building was rented and occupied, notwithstanding its bad condition.

Fifteenth witness—John P. Clendenin.

Previous the church has paid no rent, and Cox said after he had purchased the house, and some time after it had been occupied by the church, that he would not charge rent, but the house was in litigation, but does not know how the church got possession of the room.

Besides the foregoing depositions for *K. & Co.*, there is another from Simon Adler, (*Trans.*, p. 52,) in which he puts the value of the buildings in rent at $20 to $25 per month. And also one from A. M. Moore, (*Trans.*, p. 54,) who, after stating his idea of rents at Batesville to have been *very vague*, says he thought $500 a year would have been a full price for the buildings. And another witness for K. & Co., W. L. Roberts, (*Trans.*, p. 54,) after stating his knowledge of the matter to be *very limited*, agreed with Mr. Moore in his estimate.

Depositions of appellants. (*Trans., pp.* 59–94.

Particular attention is called to the deposition of John E. Womack, (*Trans., pp.* 59, 60,) who is a disinterested party in this transaction, and whose business in life, as disclosed by the record, makes him fully competent to judge of these matters. He shows H. & A. hired these buildings from 1859 or 1860 till 1869, and they were worth at least $3,600 per annum. Not one of appellants' witnesses place the rents at less than $1,200 per annum, viz:

M. A. Wycough

Values rents as follows:

2 store-rooms and cellars, at from $500 to $600 per annum each—				
At $500	$1,000	at $600	$1,200	
4 other rooms, worth from $15 to $20 per month each—				
1 year—4 at $15 per mo. each	720	at $20	960	
	$1,720		$2,160	

Now take half difference between $500 and $600 for 2 stores and cellars, and $15 and $20 per month for the 4 rooms, which is $220 per annum to be taken from the $2,160 and added to the $1,720, makes $1,940, leaving out the Odd Fellows' hall.

David S. Fraley

Gives particulars, and says from $1,600 to $1,900, and taking repairs, condition, and everything into consideration, the house has been worth $1,500 annually from the time Hirsch & Adler had possession or control of the house.

F. D. Denton

Estimates store-rooms and cellars at $400 per annum each—equal $800. Balance of house at $400 more, making $1,200. He does not in fact know the value of rents, nor the value of a brick over a frame house, the difference in insurance, safety, &c.

H. F. Archer,

A merchant, now renting a similar store-house at $500 per annum, and says he will give $500 each for the store-rooms and cellars, and *pay monthly*. He will pay $1,000 for the store-rooms and cellars per annum; says the house is worth $1,662. See his estimate. He knows the house was occupied in its worse condition at $50 per month, for one store-room and cellar, by Cohen. (*Trans.*, p. 79.)

A. W. Lyon,

A druggist and old citizen. House worth $1,500 per annum. See his testimony for estimate, &c. (*Trans.*, p. 82.)

J. H. Reed,

Merchant, says store-rooms and cellars worth $400 each at least; don't know the value of the rents of balance of the house.

John Campbell,

Who is familiar with the house, &c., estimates the rents at $1,820 per annum. See his estimates. And we would respectfully refer to his evidence, taken before the court, as to size and description of the building. (*Trans.*, p. 84.)

W. M. Aiken,

Who has a good idea of the value of property and rents, says the house is worth $1,625 per annum, and does not estimate for one office.

W. Byers,

Whose testimony should be entitled to the highest credit, he having been president of corporation, owned and rented other property in Batesville, and familiar with all the transaction. He says the house was worth from $1,800 to $1,900 per annum all the time.

H. C. Smith,

Who has been an old merchant, says store-room and cellar worth $500 per annum. See by his own rents, &c.

C. H. Wood

Puts the rents at $1,500 per annum since the war, or since Cohen occupied the house in the spring of 1866.

Summed up it stands thus:

Wycough says, per annum, $1,940.

Fraley, from $1,600 to $1,900, and on an average $1,500.

Denton says $1,200.

Archer says $1,662.

Lyon, $1,500.
Reed, $400 *for store-room.*
Campbell, $1,820.
Aiken, $1,620.
Byers, from $1,800 to $1,900.
Smith, $500 each store-room.
Wood, $1,500.

It is respectfully submitted if $1,600 *or* $1,700 *is not about a fair average of rent per annum.*

On 20th day of May, 1870, the court below heard the cause, and in substance decreed (*Trans.*, pp. 45, 46) the judgment of Womack & Welch for $12,617 57 constituted a lien on the buildings, and that K. & Co. have a lien on this property for that sum, with interest from the date of the judgment till paid. This was error, as Womack & Welch were the contractors to build the house, and they were debtors of H. & A., and with a view of securing them filed a mechanic's lien, but failed to give any credit at all for what the Institute had paid them. The record shows W. & W. owed H. & A. only $6,800, but to cover what H. & A. might thereafter advance to complete the building, the deed of trust already named was executed. The $11,000 put in the deed of trust was merely to cover the debt, $6,800 and any future advances, that is all. And the deed of trust provides, that after paying the necessary expenses and the debt due H. & A., the residue should be paid to W. & W. H. & A. could convey no greater interest to K. & Co. than they had, and this, at the outside, was not more than $11,000. By the most liberal construction, then, K. & Co., as assignees of H. & A., are not entitled to more than $11,000 from the date of this judgment. A. Hirsch himself puts the advances at $4,000. (*Trans.*, p. 129.) This would fix the limit, at its utmost, at the sum of $10,800. Equity requires the decree in this behalf should be corrected.

The court below, after decreeing this sum, referred the case to the master to take an account of the rents, but

without any rule or instructions. The master in his report (*Trans.*, p. 47, *et seq.*) adopted the rule that H. & A. were bound only for the rents actually received, and not what the buildings were actually worth, and made up his account on that idea. To this appellees excepted and their exception was overruled, and in this behalf the account was confirmed. (*Trans.*, pp. 55–57, 58.) The master, as is seen in the record, clearly erred as to the time H. & A. held possession of the premises. He did not charge them by more than one half for the time they held them, and this is made the ground of the fourth exception. (*Trans.*, p. 55.

The master, in this case, took as a rule to guide him in estimating the rents, the rule that applies in case of mortgages; but we think in this the master erred, and we take it, under all the facts of this case, the tenants in possession of the *Institute* are responsible for the rents that might have reasonably been realized from the property: just precisely as if they had been sued in ejectment, and judgment had been rendered for possession and damages by way of rents and profits, or just precisely as if in the absence of an agreement as to the amount of rent they (the tenants) had been sued for use and occupation. We think this is the rule to govern here.

Pultney v. *Warren*, 6 *Vesey*, 73–93, *and notes.*
Strike v. *McDonald*, 2 *Harr. & Gill*, 261.
Tomlinson v. *Day*, 2 *Brod. & Bing.*, 680.
Hodgkins v. *Robson*, 1 *Vent.*, 276.
Farley v. *Craig*, 6 *Halst.*, 262.
Gillespie v. *Thomas*, 15 *Wendell*, 464; 22 *ib.*, 121.
Stevenson v. *Lombard*, 2 *East*, 575.
Cole v. *Patterson*, 25 *Wendell*, 456.
Van Rensselaer v. *Bradley*, 3 *Denio*, 135; 5 *ib.*, 454.
Forbes v. *Smiley*, 56 *Maine*, 174.

In *Vandevoort* v. *Gould*, 36 *N. Y.*, 639–647, it was held, the rents and profits consist of what the premises are *reasonably* worth annually, with interest to the time of trial, which

is directly within the exceptions taken by appellants to the master's report; and this case (36 *N. Y. Sup.*) has recently been cited by this court with approbation in the last installment we have had of *Mrs. Gaines's* case. (15 *Wall.*, 632.) This establishes all appellants contend for as to the rents in this cause.

If this be correct, the testimony shows fully that the property was worth at least $1,700 per year—some of the witnesses estimate it at $1,900—while the master allows for only $600 per year.

In the statement of the account between the Batesville Institute and Womack & Welch, the contract should be taken as the basis. And Womack, the surviving partner of Womack & Welch, admits in his answer that at the time of the making of the deed of trust to Gibbs, and the rendering of the judgment on the mechanic's lien, the Batesville Institute had paid on said contract, according to the terms thereof—

The first payment, 1st May, 1859	$1,500 00
The second payment, 1st November, 1859	1,500 00
The third payment, 1st May, 1860	2,000 00
	$5,000 00
And thereafter, and before judgment	2,000 00
Total payments	$7,000 00
They were to have for building the house	$16,800 00
Deduct payments	7,000 00
	$9,800 00

Balance in fact due when the judgment was rendered, if the house had been completed. But until completed, there was in fact nothing due. And when the judgment was rendered, it was only intended thereby to give a lien thereon for the actual amount due by Womack & Welch to H. & A., and what they might actually advance to complete

the building; and that the lien should not extend to a greater amount, as against the Batesville Institute, than what should be found due the said Womack & Welch upon a fair settlement between them; and that no further proceedings upon said judgment should be had, unless the building should be finished in the manner prescribed by contract. (See the contract, p. 29 *et seq.*, *Trans.*) W. & W. estimated that it would take at least $2,000 to finish the house, and when finished it was intended the judgment should give a lien for that amount; and upon the face of the judgment it is stated, "*by consent, it is expressly entered here that this judgment is no waiver of the right of any of the parties* HERETO IN RELATION TO THE SAID $2,000 AND SAID CONTRACT, *but the same remains without prejudice.*"

It was the intention of the parties, at the time the judgment was rendered, that the Batesville Institute would not be liable for or called upon to pay, unless the building should be fully completed according to the terms of the contract without delay; and H. & A. then promised Byers that if W. & W. did not complete it they would without delay. Hence the reservation of all rights under the contract. It may be, however, that this understanding was not sufficiently set forth in the judgment. Be this as it may, Womack admits payment of $7,000, and that the building was not completed by $2,000, which would make $9,000, which, taken from $16,800, leaves $7,800 as the amount then due Womack & Welch, which sum, with six per cent. interest, is all that equity should require the first to pay W. & W. or their assignees.

It will be borne in mind that Hirsch & Adler received possession of the whole house by agreement, except the Masonic hall and rooms pertaining to said hall; that they were to have the use, occupation, rents, and profits thereof until they were paid what Womack & Welch owed them as aforesaid, or until the house should be sold, or until the possession thereof was delivered to the said Womack & Welch, or to the Batesville Institute, for which they were to pay, or credit on their said indebtedness, what the said

rents, issues, and profits were reasonably worth per annum; and they, the said *Hirsch & Adler, were to take good care of the house and* KEEP IT IN GOOD REPAIR. (See Womack's answer and Byers's deposition, sup.) They have had the control of the rents and profits ever since the 1st January, 1861, and Womack, in his answer, states that for the two store-rooms and cellars they received the rents and profits of a considerable part of the year A. D. 1860.

The house, when they took possession of it, was in good repair, and they were bound to take good care of it and keep it in repair.

From the testimony of the witnesses, the rents would be worth about $1,800 per annum. This, credited annually or monthly, as they received it, on Womack & Welch's indebtedness to H. & A., would more than pay the debt. They have held the possession ever since 1861, and have refused to deliver the possession to the Batesville Institute while they owned it, and to Mr. Cox since he has purchased it. They also refused to make repairs, and rented rooms for $25 per month when they could have obtained $50 per month, if they had tried to do so. They certainly should be held to pay what the rent was reasonably worth, and not be permitted to take advantage of their own wrong by charging them only with what they say they have received.

As to this property, H. & A. were something more than mere lien-holders; they were trustees, to hold and use the property to pay themselves, and account for reasonable rents and profits. Equity will hold them to a strict account, not of indolence and passiveness, but of activity and energy. No one will say the fund in their hands was not more than sufficient to pay their debt. They themselves were satisfied with it, and if it is sufficient, under a prudent management, equity will hold the debt paid. With the testimony before this court as to the rents, to say that a building of this value, held to pay a debt not exceeding $11,000, as by the words of the deed of trust, fails to pay it, after about eight years' possession by the creditors, and their rents worth from $1,700 to $1,900 per year, and there

is still left a balance due on the original debt of $14,410, is enough to frighten equity, which looks through the forms of things to the substance, out of the country, if not to death.

The original debt or judgment bears only six (6) per cent. interest, but this decree calls for ten (10) per cent., (*Trans.*, p. 58,) which is an error that must reverse this decree.

Fatal to this decree also is the ruling of the court below in adjudging costs against appellants. (*Trans.*, p. 58.) This was a proceeding to enforce a lien against certain property, and not for any personal recovery beyond what was required to do this; and in finding the lien existed, and decreeing it to be enforced, was exactly like decreeing foreclosure of a mortgage or sale of property under a deed of trust, which would require the costs to be paid out of the proceeds of the sale; and such should have been the order as to costs in this cause.

At the close of the decree (*Trans.*, p. 58) it appears counsel for appellees claim a lien for their fee in the cause on the property mentioned, and their claim is ordered to be indorsed on the margin of the decree. If by this the claim for fees is to be recognized as a lien on the property named, it is error. The lien might and would properly exist on the amount of the decree in favor of appellees, but the law does not recognize it as against this property, the subject-matter of the litigation; that is a clear proposition, and in this respect the decree should be reformed. (20 *Arks.*, 667.)

GARLAND,
For Appellants.

IN THE
Supreme Court of the U. S.

BATESVILLE INSTITUTE *et al, Appellants,*

vs.

M. KAUFMAN *et al, Appellees.*

BRIEF FOR APPELLEES.

On the 15th of January, 1861, Womack & Welch filed their claim for a mechanic's lien on a building constructed by them for the Batesville Institute, a corporation. Judgment in that matter was rendered in their favor in the state court, where the proceedings were instituted, at a term held in March of that year; their lien was established, and the means of enforcing it were provided, as prescribed by a statute of the State. The holders of this lien, being indebted to Hirsch & Adler, had, previously to the judgment, and on the same day on which they filed their claim, transferred it by a written instrument, duly recorded, to W. E. Gibbs, in trust for the payment of their debt. The lien, having been merged in the judgment, was, in respect of its duration, governed by statute as follows:

"Liens [of judgments] shall commence on the day of the rendition of the judgment, and shall continue for three years." Gould's Dig., ch. 96, sec. 5.

The civil war succeeded, lasting more than three years, as is well known; during which time there was no lawful government or courts in Arkansas. Penn v. Tolleson, 26 Ark., 545; Carroll v. Boyd, 27 Id., 183; Cowser v State, Id. 444. However, the State courts held that the statute of limitation ran during the war. Bennett v. Worthington, 24 Id., 487.

By this rule it followed that the lien was lost by reason of the impossibility of enforcing it. Seeing this, the Institute corporation conveyed the property to Cox, one of its stockholders, wholly on a credit. It does not appear that Cox ever paid a cent on his purchase. The deed made by the corporation to Cox contained the words "grant, bargain and sell," which by statute imply the same thing uttered in an express covenant "that the grantor is seized of an indefeasible estate in fee simple, free from incumbrance done or suffered by the grantor." Gould's Dig., ch. 37, sec. 1.

Evidently the property was not to be paid for, unless the lien should prove to have been lost in the war. Therefore the purchase was a mere venture, and had as little equity beneath it as could well be.

The claim of Hirsch & Adler having been assigned to appellees, and the trustee having died, they brought this suit. Cox, having demurred to the bill unsucessfully, rested; the other defendants answered; there was replication. We need not follow the case into its details.

The numerals following correspond with those in the brief for appellants:

1. Since a party may enter a court of equity without having a legal title, we are not aware that in any case a suit in that court should ever be brought in the name of one person for the use of another. Barraque v. Manuel, 7 Ark., (2 Eng), 516; Rogers v. Traders' Ins. Co., 6 Paige, 583; Field v. Maghee, 5 Id., 539; Gleason v. Gage, 7 Id., 121.

The assignment of the notes proved itself, and there was no evidence to invalidate it. In such case the assignor was not a necessary party. Sto. Eq. Pl., sec. 153; Trecothic v. Austin, 4 Mason, 16; Anderson v. Wells, 6 B. Mon., 540; Day v. Cummings, 19 Vt., 496; Clark v. Smith, 7 B. Mon., 273. Hirsch, the surviving assignor, being a citizen of Louisiana, his joinder as defendant would have "ousted the jurisdiction of the court." Equity Rule 47; Union Bank v. Stafford, 12 How., 327; Vattel v. Hinde, 7 Pet., 252; Barney v. Baltimore City, 6 Wal., 280.

2. The proposition that on the death of a trustee a court of chancery cannot enforce the trust without appointing a new trustee, and acting through his agency, is altogether novel and hopeless. "If the trustees should decline, or refuse to act at all, the court would appoint other trustees if necessary to carry the trust into effect. And if the trustees should die without executing the power, it would hold the trust to survive, and, upon a suitable bill in equity by the parties in interest would decree its due execution by a sale of the estate for a specified trust." 2 Sto. Eq., sec. 1060.

3. If the existence of a civil war, during which time

all the courts were closed, would not relieve the suitor from the charge of laches, no circumstance is conceivable which would have that effect. The excuse, however, is a good one. Brown v. Hiatts, 15 Wall., 182. The case of Bennett v. Worthington, above cited, has lately been overruled; and the Supreme Court of Arkansas now holds that the statute of limitations was in all cases suspended during the war. Metropolitan Bank v. Gordon. 1 MS. Opinions, June Term, 1873.

4. No one will deny that an action at law in a federal court will lie on a judgment rendered by a state court. Where a court of chancery can alone do adequate justice between the parties, their right to go into that court is unqualified, if the parties and the subject matter of the suit are within the general jurisdiction of the court. If a person having the legal title to such a judgment may sue in the United States courts at law, it follows that one holding the equitable title may sue thereon in equity. Bean v. Smith, 2 Mason, 252; Lorman v. Clark, 2 McLean, 568; Wilson v. City Bank, 3 Sumner, 422. We do not perceive that Taylor v. Caryl, 20 How., 584, has any bearing on this case. There the suit was pending in the state court. It is manifest that a judgment, once rendered, may be the subject matter of a variety of suits, in different courts, without any infringement of the province of the court rendering the judgment; and that there is a great difference between restraining the action of another court, and enforcing its judgments, or rights growing out of a judgment. The judgment is only the evidence of a debt, in which all prior evidence is merged, and is liable to be made the subject matter of new suits. The

pendency of this suit did in no wise limit the action of the state court, which might still have proceeded to enforce its judgment in its own way. Cushing v. Arnold, 9 Metc., 23; Moore v. Towle, 38 Me., 133.

The numerals of the appellants' brief failing us at this point, we will supplement them hereafter with our own:

5. There was no adequate remedy for appellees at law. A judgment may be assigned by parol, or by writing, but in any case the assignee acquires only an equitable title, and not a legal one. Clark v. Moss, 11 Ark., 737; Wright v. Yell, 13 Id., 503; Desha v. Robinson, 17 Id., 248; S. C. 23 Id., 171; Weir v. Pennington, 11 Id., 745; Sexton v. Pike, 13 Id., 195; Brearly v. Norris, 18 Id., 171. Therefore appellants could not sue at law. The trust created by the conveyance to Gibbs was also a matter of well known equitable cognizance.

6. We do not think that any tolerable purpose would be subserved by going over the details involved in the master's report, which received the most careful attention in the court below. It is manifest enough that the argument for appellants, derived from an undue prominence given to certain parts of the testimony, and a strained criticism of other parts, has the further fault of omitting a great part of the premises from which any just conclusion must be drawn; including among others, all the waste, damage and unprofitableness of the war, and the necessary outlay for repairs. Of course, by omitting at will a great part of the factors, the nominal solution of the problem may be varied indefinitely.

7. Counsel for appellants give no reason why the rule as to rents, applied in the case of ejectment, should be applied in this case, rather than that prevailing as between mortgagor and mortgagee. In ejectment the losing defendant is in the wrong; the presumptions and prejudices of the law are against him. With such an one there is no way to deal except to charge him with everything that he could have received; in which case he cannot complain; for if the measure of damages should possibly be excessive as compensation, it is still just when considered as a retribution. Here the analogy with the case of a mortgagee in possession is complete. Hirsch & Adler entered into possession because the property was security for their debt; moreover, by consent, and no wise in their own wrong; and if their conduct was not satisfactory, either the Institute or Womack & Welch might have lawfully terminated it by paying the debt. In such case the former were not liable beyond the rents actually received, unless they had been guilty of gross wrong or fraud; which they were not. Beare v. Pryor, 6 Beav., 183; Hogan v. Stone, 1 Ala., (N. S.), 496; Benham v. Rowe, 2 Cal., 387; Saunders v. Frost, 5 Pick., 259; Schaeffer v. Chambers, 2 Halst. Chy., 548; McConnell v. Hollobush, 11 Id., 61; Walsh v. Rutger's Ins. Co., 13 Abbott's Pr., 33. But the question, if it be one, is not very important in this case, for the evidence shows that Hirsch & Adler got all they could for the rent of the house. Some of the witnesses do indeed make inflated statements on the subject, of the A PRIORI sort, after the fashion of counting chickens not hatched, or the common method of making stupendous fortunes on paper,

doomed to disappear before the irony of actual experiment. But these exaggerations, always to be expected in such cases, from sanguine witnesses, are more than counterbalanced by other evidence. For the rest, it might have been supposed that Hirsch & Adler, like most others of the human family, could be trusted to get as high and frequent rents as possible.

8. The entry of ten per cent. interest was no doubt a clerical misprision; which would have been corrected on suggestion in the court below. A REMITTITUR of the excess is filed with this brief.

9. The endorsement of claims of attorney's lien on the margin of the record is made under a state statute. There could be no pretense that any interest beyond that of the client would be bound. It does not purport to be any part of the decree. Civil Code Ark., sec. 426

10. Very plainly the whole defence was conducted for the purpose of enabling Cox to defeat the lien of the judgment. Considering that the statute of limitations did not run against liens during the rebellion, this case is a far stronger one than that of Pettit v. Shepherd, 5 Paige, 493, in which the court say:

"Where the ten years lien of a judgment has expired, if a purchaser collude with the judgment debtor to deprive the creditor of his lien upon the lands purchased, knowing that the judgment is unpaid, or if he purchases under circumstances indicating an intention to deprive the creditor of the means of collecting his judgment, such purchaser will not be protected as a BONA FIDE purchaser of the land, discharged of the

lien of such judgment, although he pays the full value of the lands." Respectfully,

ROSE, for Appellees.